

In The United States District Court
For The District of Delaware

Christian Dejesus,

Civil Action No. _____

Petitioner,

v.

Thomas Carroll, Warden,
Delaware Correctional
Center And Cael C. Danberg,
Attorney General of The
State of Delaware,

Memorandum Brief

Respondents.

Memorandum Brief In Support of Habeas Petition

This is petitioner's Memorandum brief filed in support of his habeas petition, pursuant to 28 U.S.C. subsec. 2254, and subsec. 2243 (2000).

1. That the petitioner's confinement violates the Constitution, Laws and Treaties of the United States; and that the violations rise to the level of a fundamental defect which inherently resulted in a complete miscarriage of justice, inconsistent with fair procedure of State law which is of Constitutional magnitude.

2). That the general improprieties which occurred in petitioner's case, in the State proceedings, resulted in fundamental unfairness and consequently violated the petitioner's Fourteenth Amendment Right to Due process, to the Constitution of the United States.

In Support of Ground One of Habeas Petition

3) That the Sixth Amendment requires that defendants have assistance of Counsel during certain postindictment identification procedures. In defendant's case the alleged victim recanted her statement made to police by writing certified letter, prior to trial, averring in a clear and positive manner that she had made a mistake of identity. That the defendant was not the person who committed the crime against her person. In U.S. v. Wade, 388 U.S. 218, 224 (1967). It is held that the Due process Clause of the Fifth Amendment prohibits identification testimony that derives from impermissibly suggestive procedures that may lead to an inextricably mistaken identification. See Stovall v. Denno, 388 U.S. 293, 302 (1967)

A defendant must rely upon Due process principles to challenge unnecessarily suggestive procedures that occur at noncritical stages. In Stovall v. Denno, the Supreme Court recognized a defendant's Due process to exclude identification that results from unnecessarily suggestive procedures that may lead to an inextricably mistaken identification. 388 U.S. 293, 302 (1967). In petitioner's case due

In Support of Ground Two of Habeas Petition and Three

It is held that the Fifth Amendment guarantees a defendant the right to be tried for only those offenses presented in an indictment returned by the grand jury, that substantive amendments to indictments are reversible error. See St. Pierre v. U.S., 361 U.S. 212, 217-219 (1960) (amendment of indictment violates Fifth Amendment Grand Jury Clause); See U.S. v. Rosario-Diaz, 202 F.3d 54, 70-71 (1st Cir. 2000) (constructive amendment of indictment violation of Grand Jury Clause when Court permits jury to convict on evidence not included in the indictment); U.S. v. Dhingra, 243 F.3d 635, 669 (2d Cir. 2001) (constructive amendment to indictment is per se invalid); See U.S. v. Randall, 171 F.3d 195, 203 (4th Cir. 1999) (constructive amendment is per se reversible error and must be corrected on appeal even when defendant did not preserve issue by objection); U.S. v. Nunez, 180 F.3d 227, 231 (5th Cir. 1999) (constructive amendment per se reversible error when defendant convicted of crime separate from crimes alleged in indictment); U.S. v. Prince, 214 F.3d 740, 757 (6th Cir. 2000) (constructive amendment of indictment per se prejudicial and warrants reversible); U.S. v. Figee, 197 F.3d 879, 887 (7th Cir. 1999) (constructive amendment is per se reversible error when Court's instructions broaden possible bases for conviction). Petitioner's Court appointed Counsel was ineffective when he failed to file a severance motion, prior to trial, against go/other of offenses to indictment after the petitioner had already been indicted and on bail for (6)

weeks. The petitioner was rearrested and given an additional (\$30,000) bail on two new offenses unrelated and separate from the initial crime. In violation, Delaware and Federal Rules of Criminal Procedure 8(a) and 14. Therefore, amendment of joinder of offense to indictment was prejudicial to the petitioner and violated petitioner's right to due process. (U.S. C.A. Const. Amend. 14)

Ineffective Assistance of Counsel

The Sixth Amendment guarantees the right to effective assistance of counsel. The right to effective assistance of counsel applies to both retained and appointed counsel. See Cuyler v. Sullivan, 446 U.S. 335, 344-45 (1980); McMan v. Richardson, 397 U.S. 759, 771 n.14 (1970).

The United States Supreme Court established a two-prong test to evaluate ineffective assistance of counsel claims. 1) That counsel's performance fell below an objective standard of reasonableness; and 2) That counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome of the proceedings, Strickland v. Washington, 466 U.S. 668, 687 (1984). In Strickland the Court stated that the purpose of the effective assistance guarantee of the Sixth Amendment is "...to ensure that criminal defendants receive a fair trial." Id. at 689. Strickland states that a court must:

"judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment."

A) Counsel's failure to cross examine prosecution witness (Grace Almosovian) amounted to prejudice because witness's unimpeached statements and testimony was direct evidence connecting defendant to crime) See Dixon v. Snyder, 266 F.3d 693, 704 (7th Cir. 2001). See also trial transcript pages 28-34 attached hereto as exhibit-F)

B) (prejudice presumed where alleged ineffective assistance of counsel based upon unexcused failure to file direct appeal from criminal conviction upon the defendant's direction to do so) See e.g. Hernandez v. U.S., 202 F.3d 486, 489 (2d Cir. 2000); Strickland v. Washington, 466 U.S. 668, 692 (1984) (Please see attached exhibit-F1, pages 9-12). See Flores-Ortega, 528 U.S. at 484; See also Solis v. U.S. 252 F.3d 289, 295 (3rd Cir. 2001) (If counsel did not honor defendant's request for appeal, then 6th Amendment right to counsel violated.)

C) (joinder of offenses of same or similar character is more likely prejudicial because proof of 1 crime may corroborate commission of other crime); See U.S. v. Holland, 10 F.3d 696, 699 (10th Cir. 1993).

In The United States District Court
For the District of Delaware

Christian DeJesus,

Civil Action No. _____

Petitioner,

v

Thomas Carroll Warden,
Delaware Correctional
Center And Carl C. Danbeeg,
Attorney General of the
State of Delaware,

Respondents.

Exhibits

Dated: 9-4-06

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Court for the District
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ORIGINAL

06 553

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
v.)	No. _____
<u>CHRISTIAN DEJESUS</u>)	(to be supplied by Prothonotary)
Name of Movant on Indictment)	
<u>SAROE</u>)	
Correct Full Name of Movant)	

MOTION FOR POSTCONVICTION RELIEF

06 553

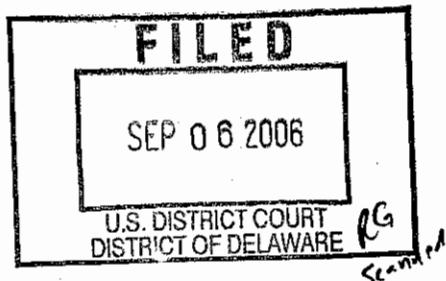


Exhibit-A

MOTION

1. County in which you were convicted Alameda County
2. Judge who imposed sentence Hon. John E. Babineau Jr.
3. Date sentence was imposed May 14, 2004
4. Offense(s) for which you were sentenced and length of sentence(s):
4 counts of P.F.D.C.F. (Count Burglary),
3 counts aggravated menacing and 1 count unlawful
impersonation - sentenced to 12 years
5. Do you have any sentence(s) to serve other than the sentence(s) imposed because of the judgment(s) under attack in this motion? Yes No
If your answer is "yes," give the following information:
Name and location of court(s) which imposed the other sentence(s):

6. What was the basis for the judgment(s) of conviction? (Check one)
 - Plea of guilty
 - Plea of guilty without admission of guilt ("Robinson plea")
 - Plea of nolo contendere
 - Verdict of jury
 - Finding of judge (non-jury trial)
7. Judge who accepted plea or presided at trial Hon. Babineau Jr.
8. Did you take the witness stand and testify? (Check one)
 - No trial
 - Yes
 - No
9. Did you appeal from the judgment of conviction? Yes No
If your answer is "yes," give the following information:
Case number of appeal 213,2004
Date of court's final order or opinion January 10, 2005

10. Other than a direct appeal from the judgment(s) of conviction, have you filed any other motion(s) or petition(s) seeking relief from the judgment(s) in state or federal court?

Yes () No () How many? ()

If your answer is "yes," give the following information as to each:

Nature of proceeding(s) N/A

Grounds raised _____

Was there an evidentiary hearing? NO

Case number of proceeding(s) N/A

Date(s) of court's final order(s) or opinion(s) N/A

Did you appeal the result(s)? N/A

11. Give the name of each attorney who represented you at the following stages of the proceedings relating to the judgment(s) under attack in this motion:

At plea of guilty or trial Ralph D. Wilkinson

On appeal Ralph D. Wilkinson

In any postconviction proceeding N/A

12. State every ground on which you claim that your rights were violated. If you fail to set forth all grounds in this motion, you may be barred from raising additional grounds at a later date. You must state facts in support of the ground(s) which you claim. For your information, the following is a list of frequently raised grounds for relief (you may also raise grounds that are not listed here): double jeopardy; illegal detention, arrest, or search and seizure; coerced confession or guilty plea; uninformed waiver of the right to counsel, to remain silent, or to speedy trial; denial of the right to confront witnesses, to subpoena witnesses, to testify, or to effective assistance of counsel; suppression of favorable evidence; unfulfilled plea agreement.

Ground one: Ineffective Trial Counsel

Supporting facts (state the facts briefly without citing cases):

The indictment is signed to the

2 changes under March Indictment with 2 changes under April Indictment: two Indictments in one

Ground two: Violation of Rule 2

Supporting facts (state the facts briefly without citing cases):

Unconstitutionality of interviewing, Indictment

Ground three: Ineffective Assistance of Counsel Allegations

Supporting facts (state the facts briefly without citing cases):

SEE Post-Conviction Motion Rule 61

for remaining claim

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: None of the grounds were

raised because of ineffective assistance of counsel

Trial counsel was ineffective from the outset right up to and including the appellate process

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

Date Signed

Signature of Movant
(Notarization not required)

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHRISTIAN DEJESUS	CASE ID # SUPERIOR COURT C303C04601
Defendant-Plaintiff,	Claim. Act. Nos. IND03031089
	IND03031090
	IND03031091
	IND0303-1092
	IND0303-1093
	IND0303 1094
	IND0303 1095
	IND03040614
	IND03040615

STATE OF DELAWARE.

MEMORANDUM OF LAW PURSUANT TO SUPERIOR COURT
CRIMINAL RULE 61(b) (1) MOTION FOR POST-CONVICTION RELIEF

COMES NOW the defendant, Christian DeJesus who moves this Honorable Court pursuant to Superior Court Criminal Rule 61 based on the statutory violations, the constitutional violations and ineffective assistance of counsel as stated in the attached motion for post-conviction relief.

This is the defendant's memorandum of law to support his request for relief this ____ day of July 2005

CASE HISTORY AND PROCEDURAL ISSUES

Defendant was arrested on March 7, 2003 for seven criminal offenses, with 16 additional offenses coming later. Trial commenced on May 13 thru 14, 2004, defendant was found guilty on May 14, 2004 and sentenced immediately thereafter to twelve years at Level 5. A timely Appeal was taken and denied. This is the defendant's motion for Post-Conviction Relief.

EXCLUDED FROM

POLICE MISCONDUCT

1) Defendant states that the arresting officer Detective Wilfredo Campos denied him due process of law to implement that less than the 4th Amendment. Upon investigating this case it was revealed to Officer Campos on February 14, 2003 that there were two suspects in the vehicle that arrived at 116 N. Scott Street, and the passenger whom was the defendant's brother the defendant was driving, exited the vehicle and in an attempt to locate the boyfriend of Solimani Torrez to collect a debt owed to him committed the offenses for which the defendant stands convicted. Officer Campos will hold this exculpatory evidence from the affidavit of probable cause. Fricke v. State, Del. Supr. 398 A.2d 783, 786

Officer Campos intentionally and deliberately filed false affidavit of probable cause at the Magistrate Court.

Campos misconduct continued when he began threatening and coercing the alleged victims, when they refused to testify against the defendant's brother because they were afraid of him, and in realizing that Officer Campos was only interested in arresting the defendant because he believed he was dealing drugs, causing Campos to develop an inherent bias towards the defendant. The victims feared reprisal from the defendant's brother who had just put a gun to their heads thereby causing them to refuse to testify against him, despite threats of being locked up by Campos.

Detective Campos kept his promise and locked Malesol and her daughter Solimani up when they refused to testify as to the guilty party, and refused to testify against the defendant as Officer Campos wanted them to because he did not commit the crimes he stood accused of as was written in the affidavits filed by Campos.

Eventually other witnesses took the stand, including up Malasel Ayala and Jennifer Toney in agreement with each other to avoid further threats, intimidation and violent behavior as well as being put in prison; agreed to testify against the wrong person because that was what Officer Campos wanted them to do due to his hatred for Christian Reyes, the defendant. Detective Campos was not interested in the truth.

Malasel Ayala had a previous extra-marital affair with the defendant only months prior to this incident.

The younger victim Grace Almodóvar however stuck to her original testimony that the defendant was not the person who put a gun to her head; she knew the defendant from his relationship with her mom; she also testified that the suspect was dark-skinned; she was referring to the defendant's brother. She was able to testify truthfully because she was too young (6) for Campos to lock her up.

Defendant claims that the with-holding of evidence that two people were in the car on February 14, 2003 and certain victims to testify falsely by arresting officers deprived the defendant of fundamental fairness 14th.

Defendant claims that the behavior of officer Campos was such as to overbear the will of Campos to resist and bring about a statement not "the product of a rational intellect and free will" without regard to the truthfulness or the reliability of the statement, and should not have been admissible under 113 3507. If not for the misconduct of Campos the defendant would have never had to stand trial for these false allegations and perjured testimony.

Defendant requests that his conviction be thrown out or as an alternative he be given an evidentiary hearing to give Malasel and Schinner the free will to tell the truth. (SEE Hubbard v. State; 782 A.2d 264 (2001) McDaniel v. State; Del.Super 433 A.2d 1025

GROUND NO. 2

PROSECUTOR MISCONDUCT

15. Defendant claims that he was denied his due process rights under the 5th and 14th amendments by the prosecutor misconduct. US v. Mather 825 F.2d 754 (3rd Cir.)

Defendant states that the prosecutor Natalie S. Woloshin illegally added two additional charges against him by adding the charges of P.F.D.C.F and unlawful imprisonment in the first degree. The defendant was arrested on March 7, 2003 and charged with seven criminal offenses by Detective Campos. He was charged with three counts of possession of a firearm during the commission of a felony; one count of first degree burglary; and three counts of aggravated menacing.

Defendant further claims that the prosecutor had a judicial officer by the name of Michael P. Reynolds set an unlawful bail of \$30,000. dollars for the two illegally added charges in criminal action numbers IN 03-04-0614 and IN 03-04-0615 depriving the defendant of his liberty.

The prosecutor Natalie Woloshin knew or should have known that adding the additional charges of possession of a firearm during the commission of a felony against the defendant was unlawful act and unlawful conduct. Defendant hereby requests this Honorable Court to dismiss the additional charges in criminal action numbers IN 03-04-0614 and IN 03-04-0615

2). Defendant further claims that the prosecutor Natalie S. Woloshin exhibited prosecutorial misconduct when she filed an unconstitutional defective enjoining Indictments. The defendant was illegally prosecuted by both a March Indictment containing the first seven offenses IN 03-03-1089; IN 03-03-1090; IN 03-03-1091; IN 03-03-1092; IN 03-03-1093; IN 03-03-1094; and IN 03-03-1095; while the

two illegally added charges make-up the April Indictment under criminal action numbers of: IN03-04-0614 and IN03-04-0615. The enjoining and intervening Indictment are prohibited by law and the Court nor defense attorney, should have allowed prosecutor Natalie Woloshin to start trial with this defective and constitutionally deficient document; as such this misconduct was a miscarriage of justice warranting dismissal of defendants convictions.

Defendant claims that he and other latin defendants are routinely prosecuted with this illegally enjoined multiple Indictments, and believes the Department of Justice is intentionally and deliberately targeting latin suspects with the use of this unconstitutional filed Indictment.

The defendant contends that he was racially discriminated and targeted because of his race and lack of knowledge as to the English criminal law and proceedings.

Defendant has reviewed a number of Indictments that were filed in New Castle County against white defendants and "not one of them were prosecuted with enjoining Indictments, only that of latin defendants demonstrating a racial discriminatory pattern. The defendant states that the law provides that he must be afforded equal protection under the 14th amendment of the Constitution of the United States of America.

As such the defendant hereby requests the Court to dismiss the case against him and have sanctions placed against Natalie Woloshin.

The defendant further suggests that this Court conduct its own independent investigation of the Department of Justice.

GROUND NO. 3

SUPERIOR COURT LACKED JURISDICTION

Defendant claims based on the defectively enjoined Indictments filed and used in this case the Superior Court lacked jurisdiction to hear his case warrants the dismissal of the case itself under the 5th and 14th amendment as well as Super. Ct. R. 6

GROUND NO. 4

DEFECTIVE GRAND JURY INDICTMENT

Defendant states that the Indictment against him was defective and constitutionally invalid violating his 5th and 14th Constitutional Amendment rights. The defendant claims that counts 1 thru 7 was March Indictment, IN 03-03-1085, IN 03-03-1090, IN 03-03-1091, IN 03-03-1092, IN 03-03-1093, IN 03-03-1094 and IN 03-03-1095.

While counts 8 and 9 made up the second Indictment which the April Indictment, IN 03-04-0614 and IN 03-04-0615

The State prosecutor Natalie S. Woloshin engined both March and April Indictment's together forming one Indictment and without objection from defense counsel tried and convicted the defendant with this invalid and unconstitutional Indictment. The State should not of been able to start trial without a valid Indictment. It's a mystery as to why the State made the decision to use two separate Indictments in the first place in that because all of the offenses occurred allegedly on or about February 14, 2003, as such all 9 offenses should have been brought under a single Indictment. This constitutional blunder by Woloshin could have been avoided.

The defendant's trial attorney apparently did not possess the skill or knowledge of filing Indictments in the State of Delaware, such action is prohibited.

Defendant further claims that the record in this case reflects that only one Indictment was filed. And the record only reflects that the April Indictment was filed which has only two criminal charges, IN 03-04-0614 and IN 03-04-0615, the two charges in this Indictment were (in count 8) possession of a firearm during the commission of a felony and count 9) unlawful imprisonment in the first degree. Defendant claims that he is entitled to relief under the 5th and 14th amendments and in accordance with Super Ct. Crim R. 61(i)(5). SEE U.S. v. Vlaeekin 803 F.2d 1085, 1088.

GROUND NO. 5

INDICTMENT FILED IN VIOLATION OF SUPERIOR COURT CRIMINAL RULE 8

Defendant claims that he was denied his due process rights to fundamental fairness and his right to equal protection all of which deprived him of a fair trial.

Defendant claims the Indictment filed by the prosecution was filed in violation of Superior Court Criminal Rule

This rule provides §(a) the joinder of offenses and of defendants, not the joinder of Indictments as is the question of law before this Honorable Court, defendant's trial attorney, for reasons unknown failed to object to these enjoining Indictments

This constitutional error in conjunction with all of the other errors stated in instant motion prevented the accused from ever receiving a fair trial.

Defendant hereby moves the reviewing Court to dismiss the charges against him and vacate his convictions.

GROUND NO. 6

CONVICTION OBTAINED BY PERJURED TESTIMONY BY STATE'S WITNESS, SOLIMANI TONES INDUCED BY THREATS AND COERCION OF DETECTIVE CAMPOS

Defendant states that his convictions should be reversed and he should be awarded a New Trial, based on the perjured testimony given by State's witness Soliman Tones, all of which denied him of a fair trial. Const. Amend 5, 14th.

Defendant states that Soliman Tones was forced to commit perjury by threats of being locked up, by Detective Campos, resulting in her given false testimony based on coercion, for both fear of Campos and fear of the defendant's brother whom was the person who committed this criminal acts. The person Campos had no interest in.

Defendant claims that his brother was the person whom was having a problem with Moreno the boyfriend of Soliman. Torres, Moreno owed a debt and was refusing, to pay up. The defendant's brother is dark-skinned while the defendant is light-skinned. If you look at the testimony of States witness Grace of trial transcript page 32, lines 5 and 6 on direct by prosecutor Woloshin (Q). Was he dark-skinned or was he light-skinned?

A). Dark-skinned.

This witness testified truthfully had a proper unbiased investigation been done it would have revealed that the defendant's brother looks like him but has a darker complexion. If not for Detective Campos inherent-bias towards the defendant, the defendant's brother could have easily of been developed as a suspect. Because of Campos bias was not interested in the witness's claims that the defendant was not the person responsible for placing the gun to any of these victim's head.

Detective Campos was also unaware that States witness's knew the defendant because there was a previous affair between the defendant and Marisol Ayala. That's why the initial investigation yielded nothing because all the witness's knew the defendant wasn't the guilty party, and never displayed this type of behavior while being in sexual relationship with their mother.

The bias Campos had for the defendant resulted in him making threats against Marisol and Soliman, thereby causing them to make false accusations against the defendant. Detective's Campos's refusal to accept the truth that defendant was factually innocent of these criminal acts enraged him, causing him to make threat of locking up the witness's if they did not testify falsely by saying the defendant was the guilty party.

Campos was able to coerce Soliman to falsely accuse the defendant as the person responsible. U.S. v. Waller 935 F.2d 445 (1991)

However Camper was not able to persuade Grace nor
Manisol to commit perjury. Manisol continued to
testify that defendant only looked like the assailant.

While Grace stuck to her original testimony, a review
of Grace's direct testimony reveals that prosecutor Wong
Shin never requested Grace to point to the person who
put a gun to her head, giving rise that the prosecu-
tion knew all to well that the defendant was innocent.

Defendant claims that the testimony by Solimani
Tomes was false and perjured and denied him his
fundamental rights to a fair trial.

Defendant claims that the lack of competent representation
prevented the trial court from determining voluntariness
of Solimani and Manisol's testimony in advance of admis-
sing them.

In determining the voluntariness of out-of-court statement
the trial court must focus its attention on a totality
of the circumstances, review of the behavior of the inter-
rogators, as well as the mental/physical makeup of the
individual being interrogated, to determine whether the
individual's will was so overborne the statements produced
were not the product of a rational, intellectual and free
will. Martinez v. State, Del. Supr., 433 A.2d 1025.

These false and perjured testimony was inadmissible
was clearly the result of coercion and threats by Detective
Camper and resulted in the defendant's conviction.

GROUND NO. 7

THE TRIAL COURT ABUSED IT'S DISCRETION IN
DENYING DEFENDANT'S REQUEST FOR TRANSLATOR
WHILE GRANTING THE STATE'S REQUEST

Defendant claims that the trial court violated his due
process rights to fundamental fairness and equal protection
of the United States Constitution.

The defendant requested that the Court appoint him a
translator because he did not fully understand the

English nor understand the Court proceedings against him in conjunction with the incompetence and ineffectiveness of counsel who did nothing to make him understand the proceedings.

While the Court first agreed to appoint defendant a translator, but when trial was to begin the translator was unavailable instead of postponing the trial, the Court abandoned its earlier ruling and forced defendant to stand trial with incompetent counsel and without the aid of a translator even though it initially honored the defendant's earlier request.

However the Prosecution's request was granted while the defendant's request was denied, this action by the trial court clearly shifted the balance of the trial proceedings in the State's favor. Sheppard v Maxwell 384 U.S. 333 L.

Defendant claims that such action denied him his constitutional rights to fairness and equal protection guaranteed to every U.S. citizen this unfairness left the defendant without a full understanding as to the trial proceedings forced him to be put on trial with a bad indictment and unable to fend for himself Const. Amend 5, 6, 14 U.S.C.A.

Defendant maintains he is innocent and based on the denial of his fundamental rights, he hereby requests the Court to appoint competent counsel and award him a New Trial.

INEFFECTIVE ASSISTANCE OF COUNSEL

In this portion of the defendant's motion, defendant will discuss the errors, omissions and counsel's conduct that rendered him ineffective, depriving him of his 6th Amendment right to effective assistance of counsel, which rendered his trial fundamentally unfair 14.

In order to substantiate a claim of ineffective assistance of counsel the defendant must show that his trial counsel's representation fell below an objective standard of reasonableness, and that there exists a reasonable probability that but for counsel's errors and omissions, the result of the Superior Court jury trial would have been different.

Strickland v. Washington 466 U.S. 668, 688 (1984)

Merely allegations of ineffectiveness of trial counsel are insufficient and defendant claims that his motion will make and substantiate specific allegations of actual prejudice.

Defendant claims that under Strickland 466 U.S. at 689 he will meet the burden of proving by a preponderance of evidence his post-conviction relief claim that his trial attorney was ineffective in representing at all phases of his trial proceedings and on Direct Appeal.

GROUND NO. 8

Trial counsel was ineffective in failing or refusing to challenge the two charges that were added illegally, counts 8 and 9, P.F.D.C.F; Unlawful imprisonment first degree.

These two charges were added in violation of the defendant's due process rights, defendant should have never

had to stand trial for these two criminal offenses which resulted in 3 years more of legal time. Had his trial counsel been competent or effective he would have objected to the additionally charges and motioned the court for dismissal, and in all probability the court would have granted the motion.

Counsel's failure here deprived the defendant of his sixth amendment right to counsel, and fell well below the reasonable standard of competence under Strickland. Defendant hereby requests that his convictions for counts 8 and 9 be vacated 6.14. U.S.C.A.

GROUND No. 9

Trial counsel's representation of the defendant, was deficient unreasonable for failing to file motion to dismiss defective enjoined indictment's pursuant to Superior Court Criminal Rule 12 prior to the commencement of trial. (SEE AND COMPARE) RHODEN v. MORRAN, 846 F.Supp 578 pretrial ineffectiveness.

Failure of trial counsel to file meritorious pretrial motions constitutes ineffective assistance of counsel and establishes "cause" for procedural default. 6th amendment

While being put on trial with a bad defective enjoined indictments of both March and April indictments, resulting in conviction, and more severe punishment.

When factually speaking the defendant should have never had to stand trial on this bad indictment, if trial counsel would have moved the trial court for dismissal.

Therefore the "prejudice" prong of Strickland is met.

Trial counsel obviously lacked both the skill and knowledge or understanding of Superior Court Criminal Rules 8 and 14. Rule 8 allows joinder of defendants and offenses not the joinder of multiple indictments. Under the circumstances counsels representation was unreasonable and defendant is entitled to relief for violations of his 6th and 14th amendment rights.

GROUND No. 10

Trial counsel's failure to conduct independent investigation rendered his assistance ineffective and wholly unprepared despite his client's persistence of innocence; deprived the defendant of a fair trial and his sixth amendment to assistance of counsel. States witness Grace testified under oath that the perpetrator was dark-skinned while counsel's client was light-skinned; strong presumption for independent investigation yet counsel never bothered to do so.

McBreen v. Surprenant, 498 F.2d 207

Pre-trial investigation and preparation are the keys to effective representation yet counsel did neither. U.S. v. Tucker, 716 F.2d 576; Sullivan v. Fairman, 819 F.2d 1282, 1389.

An investigation by defense counsel would have revealed that the defendant's brother was responsible for these criminal acts. States witness Mansol testified that the assailant looked like Chris. States other star witness testified that the person who placed a gun to her head was dark-skinned, referring to the defendant's brother.

Counsel's failure and refusal to investigate to support his client's claim of innocence was extremely damaging and virtually left his client without a defense, and assured a guilty verdict for the prosecution.

An investigation would have enabled counsel to develop the defendant's brother as a suspect and had the jury of fact this evidence presented to it, in all probability the jury would have found the defendant not guilty.

Or at a minimum created a reasonable doubt.

It is certainly true that the degree of investigation was needed as well as reasonable; failure to do so let to break down in the adversarial process and substantially altered the outcome violating defendant's due process and sixth amendment rights.

GROUND NO.11

Defendant claims that trial counsel's failure to interview state's witnesses prior to trial was unreasonable and constitutes ineffective assistance of counsel, standard below competence depriving him of 6th amendment right to the assistance of counsel.

Since the State's witnesses were being intimidated, coerced and threatened by Detective Campos it would have been reasonable and rational strategic choice to interview the witnesses independently in the absence of police. Without having to worry about being locked-up, in all probability, had trial counsel would obtained information and/or facts to support his clients claim of innocence. It is more likely than not the witnesses would have spoke freely with counsel and revealed the truth that the defendant did not enter their home and commit these acts.

Defendant claims that his attorney kept suggesting that he plead guilty and when he refused the plea offer counsel abandoned the cause, made no further attempts to prepare for trial, had no strategy and conceded his guilt. Such conduct by trial counsel failed to hold the prosecution to its burden of proof of persuading the jury that defendant was guilty. Thus, the defendant was deprived of due process, a fair trial and his sixth amendment right to counsel. U.S. v. Surinow 943 F.2d 1070

GROUND NO.12

Trial counsel was ineffective on cross-examination of state's witness Grace, whom was giving testimony that was exonerating the defendant, yet trial counsel did not cross-examine this key witness for the defense. Counsel failed to ask this witness was his client the man who entered her home and placed a gun to her head. From the testimony

that witness Grace had given of a dark-skinned man this evidence would have created a reasonable doubt in the minds of enough jurors to avoid conviction.

At this point of the trial it became evident that the defendant's attorney's effort was pretentious and a useless charade, case lacking strategy. Harris v. Commonwealth 460 U.S. 648 Sims v. Busey, 970 F.2d 1575 (1992)

Counsel's conduct virtually deprived defendant of any chance of an acquittal.

Counsel's errors and deficiencies are severe and serious enough to have undermined the confidence of the jurors.

It can be said that defendant was denied assistance of an attorney guaranteed under the 6th amendment of the constitution. Counsel's conduct and omissions cannot be relied upon as producing a just result. Strickland v. Washington 460 U.S. at 696.

Based on counsel's deficient performance defendant is entitled to reversal of his convictions; warranting a New Trial. With competent representation defendant claims the outcome of his trial results would be different.

Ground No.13

Defendant claims that trial counsel was equally ineffective on Direct Appeal denying the defendant of his right to counsel secured by the sixth amendment. Furillo v. Busey, 105 S.Ct 830

Trial counsel filed a "No-Merit" Appeal all but abandoning the case itself. The defendant was left to shift for himself, which a language barrier prevented him from effectuating a merits brief.

Up to this point the defendant's motion raised the most blatant and fundamental errors committed by his trial attorney.

There were many other errors and deficiencies attributed to counsel as well that show that the defendant was effectively left without the assistance of an attorney.

Trial counsel failed to object to inadmissible evidence of bullets and bullet holes found at the defendant's residence. Failure to subject the prosecution's case as to this evidence to get a ruling from the Court as to its admissibility under direct rules of evidence Rule 404 b. In all likelihood the Court would have ruled it inadmissible since the prosecution had no direct knowledge as to when the bullet holes were made, nor whether they were there prior to the defendant renting the residence. Counsel just stood by allowing this damaging and prejudicial testimony to be presented to the jury without objection.

The prejudice to the defendant clearly outweighed the probative value. This inadmissible and highly prejudicial evidence undermined the jury's ability to return an appropriate verdict free of unfairly prejudicial effect.

Extremely destructive to defendant's ability to receive a fair trial by an impartial jury b.14 Const. Amend.

Trial counsel's failure to interview material witnesses or investigate the case in general constitutes ineffective assistance of counsel, was unreasonable and falls well below the objectively reasonable standard of competence expected of criminal defense attorneys.

Eldridge v. Atkins 663 F.2d 228; Miller v. Weinwright 298 F.2d 426

Trial counsel's ineffectiveness was evident from the outset of this case. Counsel allowed the prosecutor to add two additional criminal charges well after the fact. The prosecutor could have added as many new charges as she desired counsel would not of objected.

Then to compound his dubious effort allowed the prosecution to prosecute the defendant with two enjoining indictments. The most jaded law student would have

moved to dismiss the defective indictment. Had trial counsel been in conformity with the applicable laws and Court rules, (Rule 8) he would have moved to dismiss the indictment. Instead the defendant was put on trial not knowing the indictment was bad.

Every time defendant would inquire as to the status of his case, or try to have the applicable laws explained to him, counsel would insist that he plead guilty to all charges.

Defense counsel's performance was not only ineffective but counsel abandoned the required duty of loyalty to his client because he refused plea offer. Counsel did not simply make poor strategic or tactical choices he acted with reckless disregard for his client's best interest, and apparently with the intention to weaken his client's case by refusing to challenge or object to the obvious. Oshman v. Schilling 861 F.2d 612.

The defendant respectfully submits that these errors committed by defense attorney, fatally undermined the reliability of the jury's verdict.

Counsel's conduct at trial left no grounds for appeal as such: the conclusion is unavoidable that counsel's conduct so undermined the proper functioning of the adversarial process that the trial and appellate proceedings cannot be relied upon as having produced a just result." Strickland supra at 686.

Defendant submits that a new trial could in all reasonable probability bring about a different verdict providing competent assistance be appointed.

Strickland v. Washington: 466 U.S. 668; Younger v. State Del. Supr., 580 A.2d 552

CONCLUSION

WHEREFORE for the reasons and authorities cited herein, defendant moves the Court for an order vacating his convictions and ordering a new trial.

Christian DeJesus
CHRISTIAN DEJESUS
Delaware Law Center
1181 Paddock Road
Smyrna, DE 19977

July 1, 2005

Certificate of Service

I, Christian Jesus, hereby certify that I have served a true and correct cop(ies) of the attached: Motion For Post-Conviction Relief and supporting documents upon the following parties/person (s):

TO: New Castle County Prothonotary: _____
Superior Court
500 N. King Street
Suite 500, Lower Level 1
Wilmington, DE 19801

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this _____ day of July, 2005

Christian Jesus

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
)
)
 v.) ID. No. 0303004601
)
)
 CHRISTIAN DEJESUS,)
)
)
 Defendant.)

06-2553

Submitted: July 28, 2005
Decided: September 27, 2005

OPINION

*Defendant's Motion for Postconviction Relief.
Summarily Dismissed.*

Appearances:

Christian DeJesus, *pro se.*

Steven Wood, Esquire, Wilmington, Delaware.
Deputy Attorney General.

JOHN E. BABIARZ, JR., JUDGE.

Exhibit B

This is the Court's decision on Defendant Christian DeJesus' motion for postconviction relief filed pursuant to Super. Ct. Crim. R. 61 ("Rule 61"). As explained below, Defendant's alleged grounds for relief have no basis in law or in fact, and his motion is summarily dismissed.

Posture. A Superior Court jury found Defendant guilty of one count of first degree burglary, one count of first degree unlawful imprisonment, three counts of aggravated menacing and four counts of possession of a firearm during the commission of a felony. This Court sentenced Defendant to 12 years of imprisonment followed by probation, and the Delaware Supreme Court affirmed.¹ Defendant now seeks to have his convictions vacated and the case against him dismissed, or at a minimum to have a new trial.

Issues. Defendant contends that most of the issues he now raises were not previously raised because defense counsel's representation was constitutionally ineffective. Defendant asserts that the police coerced the witnesses into testifying against him to obscure the fact that his look-alike brother committed the crimes, and that defense counsel participated in the cover-up by not interviewing the State's witnesses to find out what really happened. He argues that the prosecutor illegally added two charges to the indictment, thereby divesting this Court of jurisdiction over

¹*DeJesus v. State*, 2005 WL 65865 (Del.).

his case. He contends that defense counsel deprived him of any chance of acquittal by choosing not to cross-examine a six-year-old witness. He renews his argument, which failed on direct appeal, that this Court abused its discretion in denying his motion for a translator. Finally, he condemns defense counsel's representation on direct appeal.

Evidence adduced at trial. The State offered the testimony of Marisol Ayala and her two daughters, whose house Defendant barged into on Feb. 14, 2003. Ms. Ayala stated that she was sitting on her porch at 116 Scott Street in Wilmington when a man drove up in a big green car. He got out of the car and asked Ms. Ayala for the whereabouts of a man named "Moreno." When Ms. Ayala said that Moreno was not in her house, he grabbed her by the arm, pointed a gun at her head, and told her to open the door to the house. By this time, Ms. Ayala was crying and screaming. She opened the outside door and knocked on the inside door, which her five-year-old daughter had locked. When the little girl unlocked the door, the intruder yanked it open, grabbed the child, and held his gun to her head. He threatened to kill the little girl if Ms. Ayala did not tell him where Moreno was. The mother cried and screamed, saying over and over that she did not know where Moreno was. She begged the gunman to leave her child alone.

Ms. Ayala's teen-aged daughter was in the kitchen when she heard a ruckus in the other room. She came to the front room where she saw a man holding a gun to her younger sister's head. She ran from the house because she was pregnant and feared for her child. She saw the man drive away in a blue/green car.

Detective Wilfredo Campos of the Wilmington Police Department also testified on the State's behalf. He stated that he interviewed Ms. Ayala and her older daughter shortly after the crimes took place. Both women were cooperative and described the events summarized above. Ms. Ayala told him that she thought the man's name was "Chris." Det. Campos testified that Ms. Ayala was cooperative at the outset of the investigation but that when he talked with her just prior to trial she cried and stated that she was scared of the defendant.

On March 6, 2003, Det. Campos stopped a car that fit the description provided by the victims. The driver was Christian DeJesus, and the car was a 1999 Chrysler New Yorker. When Defendant's room was subsequently searched, the police found ammunition for a 9-millimeter firearm and a .38-caliber firearm, as well as a Pep Boys receipt referring to a 1999 Chrysler New Yorker with the same PA tag number as Defendant's car and made out to Christian DeJesus.

Det. Campos put together six photos of men generally matching the description of the burglar, and showed them to Ms. Ayala and her older daughter. Both women

readily identified the photo of Defendant as the man who burglarized their home.

Defendant took the stand and testified that he and his brother had rented a room in a house they shared with a number of other people. He stated that the padlock on the door to their room was to prevent other people from entering the room in their absence, but that the ammunition found in the ceiling did not belong to him. He also testified that he approached Ms. Ayala's older daughter in the street one day and asked her why she had said he was the person who had barged into her home. He stated that he did not commit the charged crimes.

→ **Discussion.** Defendant asserts that the prosecutor illegally changed the indictment by adding one count of unlawful imprisonment and an additional weapons charge, and that defense counsel was ineffective for not moving to dismiss on these grounds. The State has broad although not unlimited discretion to prosecute as it sees fit.² The additional charges meshed with the facts as shown by the evidence and as defined by the law. The prosecutor did not abuse her discretion in bringing the additional charges. It follows that there is no merit to Defendant's related argument that defense counsel should have moved to dismiss because the allegedly illegal

²*Albury v. State*, 551 A.2d 53, 61 (Del. 1988) (citing *Wayte v. United States*, 470 U.S. 598, 607 (1985) (stating that as long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision of whether to prosecute and what to charge generally rests in his discretion)).

indictment divested this Court of jurisdiction. Defendant has not shown either that counsel's conduct below a reasonable standard or that he was prejudiced by counsel's representation, as required by *Strickland v. Washington*.³)

Defendant alleges that Det. Campos coerced the witnesses into falsely testifying against him, and that defense counsel was ineffective for failing to bring this fact to light. He argues that Ms. Ayala's letters of recantation were truthful whereas her trial testimony was not. On cross-examination, Ms. Ayala stated that prior to trial she had written two letters proclaiming Defendant's innocence. Defense counsel also elicited the fact that Det. Campos had told Ms. Ayala that she would be jailed if she did not testify against Defendant. Thus the record eviscerates Defendant's claim that defense counsel was unaware of the facts surrounding Ms. Ayala's contradictory statements. The jury heard both versions of Ms. Ayala's recitation of the events, and chose to believe what she had initially told Det. Campos and what she testified to at trial, that is, that Defendant was the person who barged into her home and threatened both her daughter and herself with a gun. The jury is the finder of fact,⁴ and the jury has spoken.

Defendant also asserts that his brother committed the crimes for which he has

³466 U.S. 668, 688, 694 (1984).

⁴*Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

been convicted, and that defense counsel would have discovered this if he had conducted an adequate investigation. Having heard the Defendant testify at trial, the Court has difficulty treating this claim as anything but a highly optimistic afterthought. Defendant spoke from the stand about the room he and his brother had rented together, the padlock they put on the door to their room, and the car he occasionally let his brother drive. He never stated that his brother committed the crimes or that he and brother could be mistaken for each other, although he had ample opportunity to so testify. Nor did Defendant make this claim on direct appeal, although he raised two other arguments. This assertion defies common sense and does not constitute a viable claim of ineffective assistance of counsel.

Defendant also argues that defense counsel was ineffective for failing to cross examine Ms. Ayala's younger daughter, who was six years old at the time of trial. Defendant also asserts that the child's direct testimony exonerated him, which is flatly untrue. Furthermore, the decision not to cross examine a child witness falls within the broad range of strategic choices that will not be dissected without a showing of prejudice,⁵ which Defendant has not made.

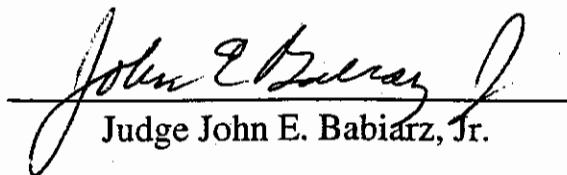
Defendant argues that this Court erred by not provided him with a translator at trial. This issue was resolved against him on direct appeal, and is therefore barred

⁵*Strickland v. Washington, supra.*

by Rule 61 (I) (4), unless warranted in the interest of justice. Defendant has not triggered this exception, which requires a showing that subsequent legal developments have revealed that this Court lacked authority to convict or punish him.⁶ This issue is barred from reconsideration.

Conclusion. For the reasons stated herein, Defendant's motion for postconviction relief is summarily dismissed.

It Is So ORDERED.



Judge John E. Babiarz, Jr.

JEB,Jr./bjw
Original to Prothonotary

⁶*Flamer v. State*, 585 A.2d 736, 746 (Del. 1994).

CERTIFICATE OF SERVICE

I, Christian DeJesus, hereby certify that I have served a true and correct cop(ies) of the attached: Notice of Appeal upon the following parties/person(s):

TO: LOREN C. MEYERS, Esquire
Chief of Appeals Division
Department of Justice
820 N. French Street
Wilmington, Delaware

19801

TO: CLERK OF THE SUPREME COURT
SUPREME COURT
P.O. Box 476
Dover, DE 19903

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977,

On this 13 day of 10, 2005.

Christian DeJesus

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIAN DEJESUS

DEFENDANT Below,
Appellant,

v.

STATE OF DELAWARE

PLAINTIFF Below,
Appellee.

No. _____

06-553-



NOTICE OF APPEAL

To: SUPREME COURT CLERK

PLEASE TAKE NOTICE that Christian DeJesus,

Defendant, below appellant, does hereby appeal to the Supreme Court

of the State of Delaware, from the order in State v. DeJesus

of the Superior Court, in and for New Castle, County, by

Schw. E. Babiarz Jr., dated September 27, 2005, in Case Number

03B3P0041001 in that court. A copy of the decision sought to be reviewed

is attached hereto.

Exhibit-C

ORIGINAL

To The Supreme Court of The State of Delaware

Christian Dejuses,

No. 499, 2005

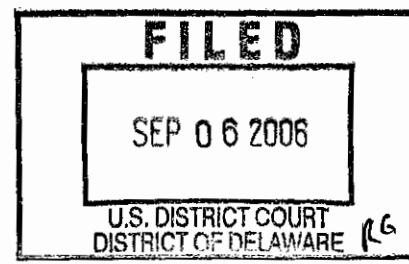
Defendant-Below,
Appellant.

06-553

V.

State of Delaware

Plaintiff-Below,
Appellees.



RG
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Appellant's Opening Brief

This is an appellant opening brief pursuant to Supreme Court Rule 15. However, other than what's presented in this brief, the appellant will rely on the Memorandum of Points and Authorities present to the Superior Court in support of his Post-Conviction Motion, attached hereto as exhibit-A.)

I. Whether The Totality of Appellant's Court Appointed Counsel's Representation Fell Below A Standard of Reasonableness And Violated Appellant's Sixth And Fourteenth Amendment Rights As Guaranteed By The Constitution of The United States. U.S.C.A. Const. Amends. 6 And 14.

Exhibit-D

1). That the Sixth Amendment provides that in all Criminal prosecutions, the accused shall enjoy the right to have Counsel... and guarantees the right to effective assistance of Counsel in Criminal prosecutions. The right to effective assistance of Counsel applies to both Federal and State prosecutions in Criminal Cases. See Bideon v. Wainwright, 372 U.S. 335, 342 (1983) (Sixth Amendment right to Counsel in Criminal proceedings applies to States through the Fourteenth Amendment). See Strickland v. Washington, 466 U.S. 668, 692 (1984).

In Appellant's case the Court must evaluate Counsel's performance to determine whether absent Counsel's errors the Appellant would not have been found guilty... and the outcome would have been different, but for Counsel's errors.

2). That Counsel's failure to investigate the conflicting stories presented by the victims and to present evidence in mitigation before the Court, at trial, was ineffective assistance, because jury would probably have found the Appellant not guilty in light of the mitigating factors. Strickland v. Washington, 466 U.S. 387, 695 (1985); Williams v. Taylor, 529 U.S. 362, 397 (2000).

Garnett v. Horn, 266 F.3d 257, 309-12 (3rd Cir. 2001); Lockett v. Anderson, 230 F.3d 695, 714-16 (5th Cir. 2000). Also, Counsel failure to investigate or prepare mitigation evidence regarding Appellant's language barriers and request for and interpreter due to his Spanish speaking dialect and limited understanding of the English language, constitutes ineffective assistance of Counsel. See Cone v. Bell, 243 F.3d 961, 978-79 (6th Cir. 2001); Emerson v. Bramley,

91 F.3d 898, 906 (7th Cir. 1996); Antwine v. Dels, 54 F.3d 1357, 1365-68 (8th Cir. 1995); AnsWorth v. Woodford, 268 F.3d 868, 873-74 (9th Cir. 2001); Battenfield v. Gibson, 236 F.3d 1215, 1234-35 (10th Cir. 2001).

3). Appellant's Counsel stated that there was no use in presenting mitigating evidence, because the victim's testimony would outweigh any mitigating factors. Constitutes ineffective assistance of Counsel. See Dobbs v. Turpin, 142 F.3d 1383, 1386-91 (11th Cir. 1998). The appellant was indeed, prejudiced by Counsel's representation, as set forth in Strickland v. Washington. This so, because the Court's Opinion Denying Appellant's Motion for Post Conviction Relief states explicitly that, Victim Ayala had written two letters proclaiming appellant's innocence. The Court went on to say that the jury heard both versions of Victim Ayala's recitation of the events, but chose to believe what she had initially said from the beginning, that the appellant was the person who barged into her home and threatened her and her daughter with a gun. Therefore the Court abused its discretion and committed plain error, because no determination was set forth by the Court as to why the jury chose to believe Victim Ayala's initial story of, rather than her two letters of recantation that the appellant was actually innocent. (See Super. Ct. Opinion page 6 of 8) Thus, Constitutes ineffective assistance Counsel.

4) The appellant has set forth and established that Defense Counsel's representation/assistance fell outside the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 689 (1984). Counsel's performance fell below an objective standard of reasonableness, and there exists a reasonable probability that, but for Counsel's unprofessional errors the result of the proceedings would have been different. Counsel's failure to raise the mitigating factors as set forth was, "Sufficiently egregious and prejudicial."

5) Under the circumstances, Counsel could have made nonfrivolous and meritorious arguments on appeal. By not doing so, appellant was prejudiced by Counsel's errors. Mason v. Hanks, 97 F.3d 887, 894 (7th Cir. 1996); Restrepo v. Kelly, 178 F.3d 634, 640-41 (2d Cir. 1999). That the record is not sufficiently developed regarding merits of appellant's ineffective assistance claim due to the lower court's abuse of discretion to develop such a record. That Counsel should have been compelled to respond to appellants' ineffective assistance claims.

Wherefore: The appellant prays that the Court will vacate the lower court's opinion and reverse and remand same.

Dated: 12-19-05

(4)

Appellant, Yes Se,
Christian DeJesus
Christian DeJesus
1181 Faddock Road
Smyrna, Delaware
19977.

Certificate of Service

This is to certify that I, Christian Dejuses, did cause to be served a true and correct copy of the Appelleants Opening Brief on the following named person(s) / agency by placing same in the United States Postal Service at the Delaware Correctional Center, Smyrna Delaware 19977, on this 19th day of December 2005.

To: Attorney General Office
Department of Justice
820 N. French Street
Wilmington, Delaware 19801

Dated: 12-19-05

Appellant, Pro Se,
Christian Dejuses
Christian Dejuses
1181 Paddock Road
Smyrna, Delaware
19977.

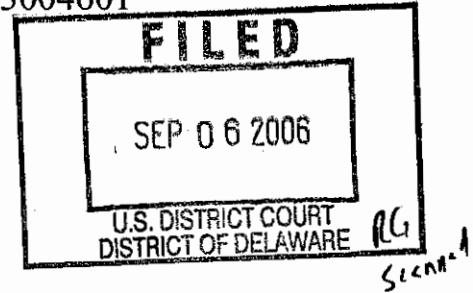
ORIGINAL

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIAN DEJESUS,	§
	§ No. 499, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County 0 6 : 5 5 3
STATE OF DELAWARE,	§ Cr. ID No. 0303004601
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 24, 2006

Decided: May 30, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices**O R D E R**

This 30th day of May 2006, upon consideration of the briefs of the parties, it appears to the Court that the judgment of the Superior Court should be affirmed on the basis of and for the reasons set forth in its decision dated September 27, 2005.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

M. Steele
Chief Justice

Exhibit E

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE, Cr. A. No. IN03031089-95 and
IN03040614-15

Plaintiff,

v.

JUN 2 2004

CHRISTIAN DEJESUS,

Defendant.

BEFORE: HONORABLE JOHN E. BABIARZ, JR., J.
and jury

APPEARANCES:

NATALIE S. WOLOSHIN, ESQ.
Deputy Attorney General
for the StateRALPH D. WILKINSON, IV, ESQ.
Office of the Public Defender
for the DefendantTRIAL TRANSCRIPT
May 13, 2004DOMENIC M. VERECHIA, RPR
SUPERIOR COURT OFFICIAL REPORTERS
500 N. King Street, Suite 2609, 2nd Floor
Wilmington, Delaware 19801-3725
(302) 255-0710

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State's Exhibit No. 11 page 104Exhibit F1 May 13, 2004
2 Courtroom No. 6A
3 11:26 a.m.

3 PRESENT:

4 As noted. 7 trans-

5

6 (The following exchange between the parties
took place in the conference room behind Courtroom 6A.)

7 THE COURT: Okay.

8 MR. WILKINSON: Your Honor, just a few moments
9 ago, about five minutes ago, Mr. DeJesus brought to my
10 attention that he wanted an interpreter. I've spoken
11 with him before in English. He speaks Spanish and some
12 English.13 He started bringing up some other concerns with
14 my representation. It appears that he may want another
15 attorney. That's why I've just asked to let him have
16 the opportunity to address you his concerns.

17 THE COURT: Mr. DeJesus?

18 THE DEFENDANT: My English is no good. You
19 understand this. I think I need -- I think not only the
20 truth, I need to show you I'm innocent.21 I need -- I think Mr. Wilkinson don't put a lot
22 of attention on my case. I don't have all my paperwork.
23 And I need my paperwork to tell him how he can hurt me.

2

4

1 And I feel -- I mean, Mr. Wilkinson today told me about
2 the time, the plea. It's good if I innocent and I free
3 to try to plea. I don't have nothing behind him. You
4 know what I'm saying?5 I don't pay money to him. He try to help me.
6 I understand that. I feel in my heart I need more help.
7 I don't care what people say. I'm innocent person. I
8 can't sign a plea for two, three, whatever years,
9 because I got my family. And I never been in the house,
10 what counts. And I never do something wrong with that
11 person.12 I don't know about law a lot. But if I got a
13 right to get another lawyer, and I got a chance to talk
14 to my lawyer and try to make this defense, I need you,
15 please, take consideration on my person, because I'm
16 innocent. I never been in trouble like that before.
17 And I got 27 years old and I never, never, never, never
18 nobody -- I never fight with nobody.19 So if I got the right to get another lawyer, I
20 say, please, I need more help. Because I feel I can
21 lose. And I can't lose because I got my family. I'm an
22 innocent person. I appreciate what he did for me. If I
23 got a right to get another person and try to show you my

1 innocence, I want you to do it for me, if I got a right,
2 if you can do it.

3 THE COURT: You don't have the right to get
4 another lawyer. You have the right to hire your own
5 lawyer. If you're going to have the services of the
6 public defender, then you have to accept the attorney
7 that the public defender assigns to you. That's
8 Mr. Wilkinson.

9 THE DEFENDANT: I don't have choice?

10 THE COURT: You don't have a choice. In fact,
11 it's too late to hire your own lawyer. He would have to
12 come in and start the case today. Obviously, he can't
13 do that. So that request is denied.

14 It's also obvious from your speaking to me that
15 your command of the English language is sufficient that
16 an interpreter is not required. And if it was felt that
17 you needed an interpreter, the time to make that request
18 would have been before the trial was just about to
19 begin. So that request is also denied.

20 Is there anything else?

21 MR. WILKINSON: Not that I can think of. If I
22 could have just one second.

23 (Pause.)

1 THE DEFENDANT: I don't know. If you say I
2 can't get a lawyer and I need -- I know I'm going to
3 lose. It's better you don't do a trial and I sign the
4 paper. You can give me whatever time you want. I'm
5 going to lose. I know -- I can't do my...

6 (Pause.)

7 MR. WILKINSON: I don't believe there's
8 anything more.

9 THE COURT: Okay. I've ruled on the request.
10 Mr. DeJesus wants to go to trial. We will go to trial.
11 We're ready to start.

12 (Whereupon the proceedings reconvened to
13 Courtroom 6A and a jury was selected and sworn.)

14 THE CLERK: Members of the jury, you have all
15 been severally sworn or affirmed. Stand together and
16 hear the evidence.

17 Your Honor.

18 THE COURT: You may be seated. It's five
minutes to 12. I think the first thing we'll do in this
19 trial is go to lunch. Before I excuse you, though, let
20 me give you two instructions that will prevail
21 throughout this trial.

22 The first is that the jury should not discuss

1 the case among themselves as the trial proceeds. This
2 afternoon you will begin to hear evidence, and you'll
3 undoubtedly start to form an opinion in your mind. You
4 may hear things later on that may cause you to change
5 your mind. That's always easy to do when your opinion
6 is held to yourself. It's simply a fact of human
7 nature; sometimes when a person expresses an opinion,
8 it's harder to change it later on. So it's for the
9 purpose of helping you keep an open mind that you're
10 instructed not to discuss the case until you enter
11 deliberations. Of course, it will be your duty then to
12 talk about the case.

13 The second instruction is you shouldn't talk
14 about the case with anyone outside the courtroom. Your
15 sworn duty as jurors will be to arrive at a verdict
16 based solely on what you see and hear in court
17 unaffected by any outside influence. And the only way
18 to protect yourself from being influenced even
19 unintentionally or unconsciously is simply not to talk
20 about the case. Once it's over, you're free to discuss
21 it with anyone you choose.

22 We will reconvene at one o'clock. And the jury
23 is now excused for lunch. The bailiff has a couple of

1 instructions to give you.

2 (The jury left the courtroom at 11:54 a.m.)

3 THE COURT: Mr. Wilkinson.

4 MR. WILKINSON: Yes, Your Honor. It's a matter
5 I should have brought up before. It deals with one of
6 the witnesses, who, I believe, is 15 years old,
7 Solimari --

8 MS. WOLOSHIN: She's now 17 years old.

9 MR. WILKINSON: She does have a juvenile record
10 of possession with intent to deliver cocaine and
11 conspiracy second in 2002, or it's an adjudication of a
12 delinquency. And I would like to be able to impeach her
13 on that.

14 THE COURT: Any objection?

15 MS. WOLOSHIN: Yes, Your Honor, I do.

16 I think that before it could be admitted there
17 has to be a balancing test specifically in 609(d)
18 dealing with a juvenile adjudications. It's generally
19 not admissible. However, the Court may, in a criminal
20 case, allow evidence of a juvenile adjudication of a
21 witness. If the conviction of the offense would be
22 admissible to attack the credibility of an adult and the
23 Court is satisfied that the admission is in evidence,

1 it's necessary for a fair determination of the issue of
 2 guilt or innocence.

3 This offense happened last year. In 2003, she
 4 was adjudicated delinquent before this incident even
 5 occurred. I don't know how it would be relevant to her
 6 testimony at all or to a fair determination of this
 7 case.

8 And the adjudication has to be -- the probative
 9 value has to outweigh its prejudicial effect. I don't
 10 know that's ever been established or proffered.

11 MR. WILKINSON: Your Honor, I would say that
 12 the fact that her adjudications happened prior to the
 13 alleged event, it's not really all that relevant.

14 THE COURT: It was adjudicated before
 15 February 14th of last year?

16 MS. WOLOSHIN: Yes.

17 MR. WILKINSON: I believe so.

18 THE COURT: It's for conduct occurring when?

19 MS. WOLOSHIN: I can hand this up to the Court.
 20 It was -- October 18th of 2002 was the date of the
 21 arrest. I don't know the date of the conviction. I can
 22 hand this up to the Court -- I'm sorry -- the date of
 23 adjudication of delinquency.

1 MR. WILKINSON: The fact it happened before is
 2 irrelevant. It happens all the time that people who are
 3 adjudicated or guilty prior to the events in question.
 4 I don't see why this is any different. The fact that
 5 she was adjudicated 2002, it's not really that remote in
 6 time. And they are matters that, you know, would have
 7 been felonies if she would have been an adult. Since she
 8 is not the defendant in this trial, a witness, I believe
 9 it should be admissible.

10 THE COURT: I'll allow the cross-examination.

11 MR. WILKINSON: Thank you, Your Honor.

12 MS. WOLOSHIN: Your Honor, there is one issue
 13 which obviously is not ripe for consideration. But if
 14 there is an attack on the out-of-court identification of
 15 at least one of the witnesses, or possibly two, the
 16 State may at that time seek to admit the actual line-up
 17 into evidence, which has been shown to defense counsel.

18 THE COURT: Okay. If it comes up, I'll decide
 19 it then.

20 Anything else?

21 Court's in recess.

22 (A lunch recess was taken at 11:58 a.m.)

1 1:08 p.m.

2 Courtroom No. 6A

3 The same day

3 PRESENT:

4 As before noted. *trans*

6 THE COURT: Ready for the jury?

7 MR. WILKINSON: If I could address real quick,
 8 Your Honor. I didn't go into this before when
 9 Mr. DeJesus asked for an interpreter.

10 Before this trial, I met with him, and we've
 11 had at least two very lengthy conversations. And I've
 12 always communicated in writing with him. I didn't think
 13 there was an issue of him needing a translator. He
 14 first made me aware of it five minutes before I met with
 15 you. I wanted to put that on the record. However, he
 16 is very upset about there not being a translator.

17 Right after we picked the jury, I called our
 18 translator who works in our office, Jorge Jenkins. And
 19 I left a message for him to be here and told him the
 20 trial is starting at one o'clock. I've been told down
 21 in the office he's supposed to be in our office at two
 22 anyway, and they're going to send him up.

23 I know Your Honor did the ruling but just --

1 THE COURT: Your translator will be available
 2 beginning at two o'clock?

3 MR. WILKINSON: That's what I was told
 4 downstairs. Because Mr. DeJesus keeps on bringing it up
 5 to me about he's upset. I understand Your Honor's
 6 ruling --

7 THE COURT: I know that you do. And I'm
 8 willing to delay the trial for another 45 minutes so
 9 that your translator can be available. Although, as I
 10 said earlier, I don't believe it's necessary because
 11 Mr. DeJesus communicated with me concerning his
 12 representation with no problem at all.

13 I also know that most of the witnesses in this
 14 case will be testifying in Spanish, so there should be
 15 no difficulty in his understanding that.

16 And out of an abundance of caution, I will wait
 17 to two o'clock. If the translator is not here by then,
 18 we'll start without him.

19 THE COURT: Ms. Woloshin.

20 MS. WOLOSHIN: Your Honor, since we have to
 21 wait until two, I just want to bring one matter to the
 22 Court's attention which I discussed with Mr. Wilkinson.

23 The first State's witness is going to be Grace

1 Almodovar. I already said she was five. She's actually
2 six years old. She'll be seven in June.

3 There was a request made by the social worker
4 that's on the case that her dad be permitted to sit with
5 her during her testimony. He understands he's not
6 allowed to talk to her, just to provide her some
7 comfort.

8 THE COURT: Sit adjacent to her.

9 MS. WOLOSHIN: That's fine.

10 I put him on the witness list out of an
11 abundance of caution. I don't know if he is going to
12 testify. He's definitely not going to be testifying as
13 far as anything Grace Almodovar says or said before or
14 anything related to her testimony.

15 THE COURT: If he's going to be present during
16 her testimony, it's going to be a problem with
17 sequestration. I would assume counsel wants witnesses
18 sequestered.

19 MR. WILKINSON: Yes. I didn't get a chance to
20 speak about this to Mr. DeJesus. If I could just...

21 (Pause.)

22 MR. WILKINSON: Yes, Your Honor. I was told by
23 the State. I thought about this before now. And I

1 explained to Mr. DeJesus my thinking in this, that if
2 the father wants to sit next to the girl, he's not going
3 to come back to testify to anything dealing with the
4 little girl, that we don't have an objection to that.

5 THE COURT: Okay.

6 MR. WILKINSON: I don't see how it's going to
7 adversely affect Mr. DeJesus at all in this case and
8 could one way be an --

9 THE COURT: That's fine.

10 Bring the jury in so I can tell them about the
11 delay.

12 (Pause.)

13 (The jury entered the courtroom at 1:15 p.m.)

14 THE COURT: Ladies and gentlemen, there's going
15 to be a brief delay in the beginning of the trial. The
16 defendant has requested the assistance of an
17 interpreter. And that interpreter is not available
18 until two o'clock.

19 Now, the Court has previously determined that
20 Mr. DeJesus speaks English well enough to proceed with
21 this trial. Since he has made arrangements to have
22 someone to assist him, but that person isn't available
23 until two o'clock, I've agreed that it's appropriate

1 that we delay the start of the trial until then.

2 It should not affect the ending time of the
3 trial. It should still be in your hands tomorrow for
4 decision.

5 I'm not going to ask you to stay in the jury
6 room for the next 40 minutes. You're free to leave and
7 go outside. Just come back to the jury room around
8 two o'clock, and we'll get started then.

9 The jury is now excused.

10 (The jury left the courtroom at 1:16 p.m.)

11 THE COURT: Okay. Court will be in recess
12 until two o'clock.

13 (A recess was taken.)

14 THE COURT: Bring in the jury.

15 I understand your interpreter hasn't shown up.

16 MR. WILKINSON: The problem is he's in a trial.
17 He's in a trial with Mr. Hillis, which it looks like
18 they still have to do closings and instructions. And
19 I've explained --

20 THE COURT: Mr. DeJesus has demonstrated he has
21 a good understanding of English, so we'll go forward.

22 Bring in the jury.

23 MR. WILKINSON: Okay.

1 (The jury entered the courtroom at 2:04 p.m.)

2 THE COURT: All right, ladies and gentlemen.

3 The interpreter that Mr. DeJesus wanted to use is
4 involved in another trial right now and can't be here.
5 As I indicated before, pretrial I examined the issue and
6 determined that there was good English fluency here.

7 You're about to hear a criminal case. And you
8 probably know many of the principles I'm just going to
9 state, but I'd like to take a moment to remind you of
10 them.

11 The first is, of course, that the defendant is
12 presumed innocent. That is, he is an innocent person
13 unless and until the evidence convinces you beyond a
14 reasonable doubt that he is guilty. The burden of proof
15 is on the State to prove the defendant guilty. The
16 defendant has no burden to prove his innocence or even
17 to present any evidence on his behalf.

18 I'm going to give you a somewhat longer
19 explanation of the term "reasonable doubt" at the end of
20 the case. It's a common sense term, and please keep it
21 in mind throughout these proceedings. The defendant is
22 innocent until proven guilty beyond a reasonable doubt.

23 In a few moments you will hear that the

1 defendant has been indicted. An indictment is simply a
 2 written statement of the charges against the defendant.
 3 In and of itself it is entitled to no weight whatsoever.
 So don't allow your judgment in this case to be
 5 influenced even a little bit by the simple fact that
 6 there's been an indictment.

7 In a few minutes the attorneys will be giving
 8 you their opening statements. Now, the opening
 9 statements are not evidence. Nothing the attorneys say
 10 in this case is evidence. The evidence will come from
 11 the witnesses on the witness stand and any physical
 12 objects or documents introduced into evidence.

13 The attorneys in their opening statements will
 14 give you a better idea of what this case is all about,
 15 sort of a general outline of what they expect the
 16 evidence to show.

17 Now, I can tell you, presiding over 500 trials,
 18 that nobody can predict exactly what the evidence is
 19 going to show. Some things always change even a little
 20 bit. So don't take the opening statements for anything
 21 more than what they are, a general outline to help you
 22 understand the testimony as you begin to hear it.

23 Now, by telling you that nothing that counsel

1 say is evidence in itself, I don't mean to downgrade
 2 their role. They are essential to the presentation of a
 3 fair trial. And they are officers of this court much in
 4 the same way that you are and that I am.

5 Ms. Woloshin, you may give your opening
 6 statement.

7 MS. WOLOSHIN: Thank you, Your Honor.

8 May it please the Court, counsel, as a parent,
 9 your worse, most frightening nightmare is someone
 10 breaking into your house at gunpoint and taking that gun
 11 and putting it into your child's head. That is what the
 12 defendant did.

13 Valentine's Day last year at about 8 p.m. in
 14 the evening, Marisol Ayala was with her two children at
 15 her house in the city of Wilmington on the west side.
 16 She was outside on the porch smoking a cigarette when
 17 the defendant pulled up, demanded to know where a
 18 certain person was. And when she told him she didn't
 know where he was, he pulled a gun out on her.

20 He then demanded to go into her house.
 21 Ms. Ayala tried to stall because she knew her children
 22 were inside. He forced her to knock on the door by
 23 holding a gun to her. And when she knocked on the door,

1 her little five-year-old answered it. Little Grace
 2 Almodovar answered the door, opened it.

3 The defendant then threw Marisol Ayala aside,
 4 grabbed little Grace, and did the unthinkable. He
 5 grabbed little Grace and put the gun to her head, right
 6 up to a five-year-old's head and demanded her mother to
 7 tell him where this person was. She kept saying, I
 8 don't know; he doesn't live here.

9 Ms. Ayala's other daughter, Solimari Torres,
 10 who was then 15 years old, was in the kitchen. She
 11 heard what was going on and came out to see what was
 12 going on. When she came out, she screamed, saw her
 13 little sister with the gun to her head, her
 14 five-year-old little sister, became dizzy and fell to
 15 the ground crying, screaming.

16 The defendant then came over to her, put a gun
 17 to her head, demanded to know where this person was.
 18 She said, He's not here. The defendant then ran
 19 throughout the house to see if this person was there.
 20 Of course, he wasn't.

21 Then the defendant left, leaving these three
 22 helpless people terrified in their homes. But as the
 23 defendant left, got back into his car, he took out the

1 gun, he fired some shots from his gun.

2 Good afternoon, ladies and gentlemen. My name
 3 is Natalie Woloshin. I'm a prosecutor with the State of
 4 Delaware. Seated at counsel table with me is Detective
 5 Wilfredo Campos with the Wilmington Police Department.
 6 He's what's known as a chief investigating officer. As
 7 such, he's permitted to stay in the courtroom at counsel
 8 table to help with the presentation of the evidence.

9 Seated at the next table is Mr. Wilkinson, who
 10 represents the defendant, seated over there, Christian
 11 DeJesus.

12 As Judge Babiarz explained to you, the
 13 defendant was charged with an indictment. As he
 14 explained, it's just a charging document. And you've
 15 already heard the charges against the defendant. But I
 16 want to go through them with you so that you understand
 17 the charges against him and the evidence that will be
 18 presented against him that prove each and every element
 19 of all the offenses.

20 The first charge is burglary in the first
 21 degree. That Christian DeJesus, the defendant, on or
 22 about the 14th day of February 2003, in the County of
 23 New Castle, State of Delaware, did at night, knowingly

1 and unlawfully, enter or remain in a dwelling located at
 2 116 North Scott Street, Wilmington, Delaware, with the
 3 intent to commit the crime of unlawful imprisonment
 4 first degree therein and when, in effecting entry or
 5 when in the dwelling, he was armed with a gun, which is
 6 a deadly weapon.

7 Count II in the indictment is aggravated
 8 menacing. And that alleges the defendant, on the 14th
 9 day of February 2003, in the County of New Castle, State
 10 of Delaware, did intentionally place Marisol Ayala in
 11 fear of imminent physical injury by displaying what
 12 appeared to be a deadly weapon, a gun.

13 Count III in the indictment is possession of a
 14 firearm during the commission of a felony. That alleges
 15 on the same date and time, in the County of New Castle,
 16 State of Delaware, the defendant, Christian DeJesus, did
 17 possess a gun, a firearm, during the commission of
 18 aggravated menacing against Marisol Ayala.

19 Count IV is aggravated menacing. And that
 20 alleges that on or about the 14th day of February 2003,
 21 in the County of New Castle, State of Delaware, the
 22 defendant did place Grace Almodovar, a five-year-old, in
 23 fear of imminent physical injury by displaying what

22
 1 appeared to be a deadly weapon, a gun.

2 And Count V is possession of a deadly weapon
 3 during the commission of a felony. And it alleges that
 4 during the crime, the aggravated menacing against the
 5 five-year-old, Grace Almodovar, the defendant did
 6 possess a firearm, a gun.

7 Count VI in the indictment is again aggravated
 8 menacing. And it alleges that on the same date and
 9 time, the defendant did intentionally place Solimari
 10 Torres, the 15-year-old, in fear of imminent physical
 11 injury by displaying what appeared to be a deadly
 12 weapon, a gun.

13 Count VII is again possession of a firearm
 14 during the commission of a felony. And it alleges that
 15 when the defendant committed the crime of aggravated
 16 menacing against Solimari Torres that he did possess a
 17 gun.

18 Count VIII, which is the second to final charge
 19 in the indictment, is unlawful imprisonment first
 20 degree. That alleges that the defendant, on the 14th
 21 day of February 2003, the defendant did knowingly and
 22 unlawfully restrain Marisol Ayala under circumstances
 23 which exposed her to the threat of serious physical

1 injury.

2 Count IX alleges possession of a deadly weapon
 3 during the commission of a felony. That when the
 4 defendant committed the crime of unlawful imprisonment
 5 against Marisol Ayala, he did so with a firearm, a gun.

6 Those are the charges against the defendant
 7 which the State intends to prove and will prove to you
 8 throughout the trial.

9 There are two types of evidence that the State
 10 will present to you. The first is testimony. The
 11 witnesses will come into court and up on the witness
 12 stand and tell you what happened.

13 You will hear from Marisol Ayala, the mother.
 14 And she will tell you about what happened to her and her
 15 family. She will testify how scared she was, how
 16 terrified she was for the safety of herself and her
 17 children. She will testify how she pleaded with the
 18 defendant to take her and leave little Grace alone. She
 19 will testify how she contacted the police 'cause she was
 20 so afraid of what happened.

21 You will also hear from her daughter, Solimari
 22 Torres, who is now 17 years old. And she will tell you
 23 how, when she saw her little sister with a gun to her

1 head, she dropped to the ground. She couldn't move.
 2 She will tell you how she was in the kitchen cooking for
 3 her family when she heard something going on in the area
 4 by the front door. And she will tell you how the
 5 defendant ran throughout the house. She will tell you
 6 how he pointed the gun at her.

7 And she will tell you that when he left the
 8 house, she saw him get into a greenish in color type of
 9 car, a Chrysler New Yorker, that she had seen him in
 10 before. And she will tell you that when he drove down
 11 the street, she heard him firing shots with this gun.

12 You will also hear from Detective Campos with
 13 the Wilmington Police Department. And he will tell you,
 14 about two weeks after this incident, he stopped the
 15 Chrysler New Yorker, this greenish in color car. And he
 16 will tell you that the driver of that car was the
 17 defendant. And he will tell you that the car was
 18 registered to the defendant.

19 And he will tell you how members of the
 20 Wilmington Police Department executed a search warrant
 21 at this residence. And in that residence, his room was
 22 padlocked. And when they went in, there was some --
 23 they noticed that the ceiling tiles, that something was

25

1 wrong with them. So they looked beyond those ceiling
 2 tiles and found lots of ammunition for a gun. A box of
 3 ammunition that normally holds 50, there were only 20,
 4 and about eight or nine other types of ammunition and
 5 bullets. He will tell you that when he interviewed the
 6 defendant, the defendant told him that the room in the
 7 house that was padlocked was his.

8 That's the evidence against the defendant.
 9 That Marisol Ayala and Solimari Torres and little Grace
 10 Almodovar were in their house doing what all families
 11 do, being together, preparing for dinner, and the
 12 defendant came in at gunpoint and held them all there,
 13 including little Grace. Thank you.

14 THE COURT: Mr. Wilkinson.

15 MR. WILKINSON: Good afternoon, ladies and
 16 gentlemen of the jury. My name is Ralph Wilkinson. I'm
 17 representing Christian DeJesus, seated over there at the
 18 table.

19 The evidence that is going to be presented
 20 today at trial is going to show that Mr. DeJesus did not
 21 commit this crime. You're going to hear evidence that
 22 Marisol Ayala, the mother in this incident, after this
 23 alleged event, wrote two letters stating that she got it

26

1 wrong, that Mr. DeJesus did not commit this crime, and
 2 that she did not want an innocent man to be sent to
 3 prison for this offense.

4 She wrote a letter -- the evidence is going to
 5 show she wrote it directly to Mr. DeJesus. And she
 6 wrote another letter in English, and she took the time
 7 to get it notarized, too.

8 I ask that you pay close attention to the
 9 testimony and particularly during the cross-examination.
 10 Because under the cross-examination sometimes the story
 11 is going to come out different after it is asked more
 12 questions then the State may ask. At the end of this
 13 trial, you're going to find Mr. DeJesus did not commit
 14 this crime.

15 THE COURT: The State may call its first
 16 witness.

17 MS. WOLOSHIN: Yes, Your Honor. Could we just
 18 approach, the parties, for scheduling just briefly?

(Sidebar held off the record.)

19 THE COURT: The witnesses are still waiting
 20 down in the attorney general's witness room. They
 21 weren't told to come up here until 2:30. So I ask that
 22 you go back into the jury room. As soon as the

1 witnesses are here, we'll have you come back in.
 2 (The jury left the courtroom at 2:21 p.m.)
 3 MS. WOLOSHIN: Your Honor, all the other
 4 witnesses will be here, so that we don't have any
 5 delays. The only other witness that may be a little bit
 6 of a problem, but I told them to bring her up at
 7 three o'clock, was Solimari Torres, who is down in the
 8 juvenile holding cell. I told them to bring her up
 9 exactly at three o'clock so that way she would be here
 10 when we are ready for her.

11 THE COURT: That's fine. If there's any other
 12 witness problem like that, I'm happy to have you address
 13 me in open court in front of the jury. Because it
 14 doesn't really make any difference; I have to tell them
 15 about it anyway.

16 MS. WOLOSHIN: Okay. I'm sorry. Thanks.

17 THE COURT: That's okay. Some judges are
 18 different. But I'm happy to let the jury in on our
 19 little sidebars.

20 (A short recess was taken.)

21 THE COURT: Bring in the jury.

22 THE BAILIFF: Yes, Your Honor.

23 (Pause.)

Translator for W.

28

1 (The jury entered the courtroom at 2:32 p.m.)
 2 THE COURT: Ms. Woloshin, you may call your
 3 first witness.

4 MS. WOLOSHIN: Thank you, Your Honor. The
 5 State calls Grace Almodovar.

6 (Pause.)

7 THE COURT: First we need to swear the
 8 interpreter.

9 (MARIA PEREZ CHAMBERS was sworn by the clerk of
 10 the court to interpret Spanish into English and English
 11 into Spanish.)

12 GRACE ALMODOVAR, having been sworn under oath
 13 through the interpreter as a witness for the State, was
 14 called to the stand and testified as follows:

15 THE COURT: I notice we do have one juror who
 16 has an Hispanic name.

17 If there is any member of the jury who
 18 understands the Spanish language, you're to be guided by
 19 the interpreter as interpretation of the witness
 20 testimony and not furnish your own. That's so all
 21 jurors may be on the same page.

22 One other thing, Grace's father is present on
 23 the stand. The State requested that, and the defense

	29		31
1	agreed that it would be appropriate that her father be	1	A lie.
2	nearby just to make her feel comfortable.	2	Q. And is it good to tell a lie or is it bad?
3		3	Bad.
5		4	Q. Last year, way long ago when you were in
6	DIRECT EXAMINATION	5	kindergarten, did you live with your mom?
8	BY MS. WOLOSHIN:	6	Yeah.
9	Q. Hi, Grace.	7	Q. And how about your sister Solimari, did she
10	A. Hi.	8	live with you, too?
11	Q. Can you speak into the microphone? Can you	9	A. Yes.
12	speak loud into the microphone so that everybody can	10	Q. Was there a time that someone came to your
13	hear you?	11	house and you were scared? Yes? <i>Leading</i>
14	A. Yes.	12	A. Yes.
15	Q. Okay. Can you tell the jury how old you are.	13	Q. Can you tell the jury what happened when
16	A. I'm six.	14	somebody came to your house and that made you scared?
17	Q. And what grade are you in in school?	15	What, I should be telling these to other
18	A. First.	16	people?
19	Q. And who is your teacher?	17	Q. Well, pretend you're just telling it to me.
20	A. Ms. Branashaw.	18	Okay? Tell me what happened when someone came to your
21	Q. Do you like school?	19	house that made you scared.
22	A. Yeah.	20	A. So can I tell them?
23	Q. You didn't have to go to school today, did you?	21	Q. Yes, you can tell them.
	A. Nope.	22	A. Can I show you with my hand?
	Q. Instead you came here; right?	23	Q. Yes.
	30		32
1	A. Yep.	1	MS. WOLOSHIN: Let the record reflect that the
2	Q. Can you tell the jury what your dad's name is.	2	witness is showing her thumb and her index finger in a
3	A. Edgardo.	3	pointed position.
4	Q. Edgardo?	4	BY MS. WOLOSHIN:
5	A. Yeah.	5	Q. Can you tell me, 'cause we're just talking, can
6	Q. Can you show the jury who he is so that they	6	you tell me what this is (indicating)?
7	can all see? Can you point him out so everyone can see	7	A. A gun.
8	him?	8	Q. A gun. And did someone come to your house with
9	(The witness complies.)	9	a gun?
10	BY MS. WOLOSHIN:	10	MR. WILKINSON: Objection, Your Honor. I think
11	Q. What color is your shirt?	11	this is rather leading.
12	A. Pink.	12	THE COURT: Overruled.
13	Q. If I were to tell you that your shirt was	13	BY MS. WOLOSHIN:
14	green, would that be the truth or a lie?	14	Q. Did someone come to your house with a gun?
15	A. A lie.	15	A. Yes.
16	Q. Is it good to tell a lie or is it bad to tell a	16	Q. And how did that make you feel when somebody
17	lie?	17	came to your house with a gun?
18	A. Bad.	18	A. Sad.
19	Q. And am I a boy or a girl?	19	Q. Who else was there when this person came to
20	A. A girl.	20	your house?
21	Q. Good. You got that one right.	21	A. My sister, my mom, and me.
22	If I were to tell you that I was a boy, would	22	Q. Was the person that came to your house with a
23	that be the truth or would that be a lie?	23	gun, was it a man or a woman?

	33		35
1	A. A man.	1	Grace, you may step down then. Thank you,
2	Q. And do you remember what color hair the man	2	Grace.
3	had?	3	(Pause.)
	A. Black.	4	THE COURT: Ms. Woloshin, you may call your
5	Q. Was he dark-skinned or was he light-skinned?	5	next witness.
6	A. Dark-skinned.	6	MS. WOLOSHIN: Thank you, Your Honor. The
7	Q. What did the man do with the gun to you?	7	State calls Marisol Ayala.
8	A. You mean when he put it on my face?	8	(Pause.)
9	Q. Is that what he did, Grace?	9	MARISOL AYALA, having been sworn under oath
10	A. Yes.	10	through the interpreter as a witness for the State, was
11	Q. Can you show the jury or show me, where on your	11	called to the stand and testified as follows:
12	face did he put the gun?	12	(2)
13	A. (Indicating).	13	DIRECT EXAMINATION
14	Q. And when he did that, how did that make you	14	
15	feel?	15	BY MS. WOLOSHIN:
16	A. Sad.	16	Q. Good afternoon, Ms. Ayala.
17	Q. Okay. If I can just have a moment, Your Honor.	17	A. Good afternoon.
18	(Pause.)	18	Q. Is it okay if I call you Marisol?
19	BY MS. WOLOSHIN:	19	A. Yes.
20	Q. What's your sister's name?	20	Q. Can you tell the jury where you lived last year
21	A. Solimari.	21	in February. Did you live on Scott Street?
22	Q. Did Solimari see you with a gun to your head?	22	A. Yes. 116 North Scott Street.
23	MR. WILKINSON: Objection.	23	Q. And in February of last year, who lived with

	34		36
1	THE WITNESS: Yes.	1	you?
2	MR. WILKINSON: I think it's speculation about	2	A. Solimari Torres.
3	someone else.	3	Q. Who is Solimari Torres?
4	THE COURT: It's overruled. It doesn't	4	A. My daughter, and Grace Marisol, too.
5	necessarily call for speculation.	5	THE COURT: Can the jury hear the interpreter's
6	BY MS. WOLOSHIN:	6	interpretation?
7	Q. Did Solimari see someone put a gun to your	7	Okay.
8	head?	8	BY MS. WOLOSHIN:
9	A. Yes.	9	Q. Is Grace your daughter?
10	Q. What did she do when she saw that?	10	A. Yes.
11	A. She was screaming.	11	Q. And while you were living there, do you
12	Q. What about you, when the gun was put to your	12	remember a time that Detective Campos came to your
13	head, what -- did you scream?	13	house?
14	A. Yes.	14	A. Yes.
15	Q. Were you sad? Okay.	15	Q. And did he interview you?
16	MS. WOLOSHIN: Your Honor, at this point I have	16	A. Yes.
17	nothing further. Thank you.	17	Q. And what did he interview you about?
18	THE COURT: Mr. Wilkinson.	18	A. About an incident that took place at my house.
19	MR. WILKINSON: Just have one second.	19	Q. And when you talked to Detective Campos, did
20	(Pause.)	20	you talk to him voluntarily?
21	MR. WILKINSON: I don't have any questions for	21	A. Yes.
22	this witness.	22	Q. And what incident did you talk to him about?
23	THE COURT: Okay.	23	A. We were talking about the incident that took

1 place at my house when someone came in with a weapon
 2 while I was sitting outside smoking. He put the gun on
 3 me and asked me to go into the house because he was
 looking for someone else.

5 Q. Do you remember how the person got to your
 6 house?

7 A. It was a person that was very angry.

8 Q. Do you know if the person walked to your house
 9 or was in a car?

10 A. In a car.

11 Q. Do you remember what the car looked like?

12 A. It was a big green car.

13 Q. And you said that the person that came to your
 14 house was very angry?

15 A. Yes.

16 Q. And how did you know this person was angry?

17 A. Because of his attitude and the way he barged
 18 into my house.

19 Q. While you were outside smoking a cigarette, did
 20 this person come over to you to talk to you?

21 A. Yes.

22 Q. And this person, was it a man or woman?

23 A. A man.

1 five.

2 Q. And you said that you were crying?

3 A. Yes.

4 Q. Why were you crying?

5 A. He had a gun to my head. The least I could do
 6 was cry.

7 Q. And what happened when you were knocking and
 8 crying?

9 A. So when the little one saw that I was crying
 10 and I told her, Please open the door, I'm not playing,
 11 she opened the door. But when she opened the door, she
 12 hid behind the door. I am thinking he probably thought
 13 that that was the person he was looking for. So he
 14 yanked the door and he saw her. When she saw him, she
 15 did not cry. She didn't scream. She kind of froze.

16 Q. And so what did he do when he saw Grace?

17 A. He grabbed her by the arm.

18 Can I go on?

19 Q. Yes.

20 A. So he grabbed her by the arm. He pulled out
 21 from behind the door and he asked me where Moreno was.
 22 I told him, I already told you he's not here. He said,
 23 Tell me where he is. And he put the gun on Grace's

1 Q. And what did this man say to you while you were
 2 on the porch?

3 A. He asked where Moreno was.

4 Q. What did you answer?

5 A. That he wasn't in the house.

6 Q. Who was in your house at that time?

7 A. Solimari, who is my oldest child, and the
 8 little one, Grace.

9 Q. So there was no men in your house at that time?

10 A. No.

11 Q. And what did this man do when you told him that
 12 this -- when this person Moreno wasn't in your house?

13 A. He said, yes, he's in there. He grabbed me by
 14 the arm and told me to open the door. So I opened the
 15 first door to my house into the hallway. And the little
 16 one thought that I was playing with her. And she locked
 17 the second door. It wasn't until I start knocking when
 18 I was crying.

19 Q. When you say the little one locked the door,
 20 who are you talking about?

21 A. Grace Marie.

22 Q. And last year how old was Grace?

23 A. She's six. She'll be seven in June. She was

1 head. And he said, Tell me where he is or I will kill
 2 her.

3 Q. When you saw this person put a gun to Grace's
 4 head, what were you thinking?

5 A. I wasn't thinking. I was screaming. I asked
 6 him not to do anything to my girls. I told him to do it
 7 to me. But at that time I don't think I was thinking.

8 Q. And what was Grace doing when the gun went to
 9 her head?

10 A. She had no -- she had no movement. She was in
 11 shock.

12 Q. Then what happened?

13 A. At that time my oldest one was cooking. And
 14 she hadn't really noticed what was going on. But then
 15 when I yelled, Let her go; if you're going to do
 16 anything, do it to me; you need to let her go; my little
 17 one is ill, and he said, All I want is Moreno, my oldest
 18 one heard it. And she took one look and then she took a
 19 second look. And I don't think she could believe it,
 20 'cause she fell to the ground.

21 Q. When this person was talking to you, the man
 22 with the gun, was he speaking in English or in Spanish?

23 A. He was speaking Spanish.

1 Q. And do both Grace and Solimari understand
 2 Spanish?
 3 A. Yes.
 4 Q. What happened when Solimari fell to the ground?
 5 A. She was pregnant at the time, so she fell down.
 6 I guess she was dizzy. So when I started screaming,
 7 Look what you've done, Look what you've done, She's
 8 pregnant, he just left.
 9 Right after he left, I went to Solimari and I
 10 woke her up. She woke up. And when she woke up, she
 11 said, Oh, my God. I asked her if she was okay. She was
 12 okay. She was where -- and asked for Moreno. And at
 13 that time she tried to leave. And I held her at home
 14 and kept her because I told her she couldn't go out.
 15 She was on probation, and it was past nine o'clock.
 16 Q. At some point did you contact the police?
 17 A. Immediately, yes.
 18 Q. And a police officer in uniform came to your
 19 house; correct?
 20 A. Yes.
 21 Q. And did you tell this police officer what
 22 happened?
 23 A. Yes.

1 Q. Did you talk to Detective Campos that day or
 2 did you talk to him some other day?
 3 A. I think it was the following day. I think it
 4 was the next day. Because I think that day the only
 5 people other than the police were the people from
 6 Downtown Vision, where my daughter's father works. And
 7 they had heard it on a police radio. And they showed
 8 up. So I think it was the following day.
 9 Q. Where did Grace's father work last year at that
 10 time?
 11 A. For the date when this all happened?
 12 Q. Yes.
 13 A. In Downtown Vision.
 14 Q. And did he come to your house?
 15 A. Yes.
 16 Q. And did you tell him what happened?
 17 A. He had heard some of it over the police radio,
 18 because he works with the surveillance cameras.
 19 Q. When you spoke to Detective Campos, did you
 20 give him anybody's name who you thought came to your
 21 house with the gun that night?
 22 A. The name of the person itself, no, because I
 23 had only seen this person in the neighborhood a few

1 times. I did say that I thought his name was Chris.
 2 Q. And did you give Detective Campos a description
 3 of the car that you saw Chris driving that night when he
 4 came to your house?
 5 A. Yes.
 6 Q. And did Detective Campos show you some
 7 photographs of some people?
 8 A. Yes. But it wasn't that day or the day he took
 9 down some information. I think it was a week later.
 10 Q. So about a week later Detective Campos showed
 11 you some photographs?
 12 A. Yes.
 13 Q. And in those photographs, did you recognize the
 14 person who came to your house with a gun? —
 15 A. Of all the pictures he showed me, all but one
 16 of the men were black. And we pointed to one, and we
 17 also showed it to my daughter. And she picked the same
 18 one. And we said we think it's him.
 19 Q. Okay. And when you pointed to that picture,
 20 what did you tell Detective Campos about that picture?
 21 A. All I said was that.
 22 Q. Did you tell Detective Campos when you pointed
 23 to that picture that that was the person who came into

1 your house with a gun?
 2 A. Yes. That it looked like that person, yes.
 3 MS. WOLOSHIN: If I could just have a moment,
 4 Your Honor.
 5 (Pause.)
 6 BY MS. WOLOSHIN:
 7 Q. Is the person that you pointed out to Detective
 8 Campos in the photograph, is he in the courtroom?
 9 A. By the picture that I was shown then, which I
 10 saw today, I can't say exactly that that's him, but it
 11 looks like him.
 12 Q. And Solimari, your daughter, was also shown the
 13 same pictures; correct?
 14 A. The day Detective Campos came to our house my
 15 oldest daughter was there, and she was shown the
 16 picture, and I was there.
 17 MS. WOLOSHIN: Your Honor, may we approach,
 18 please?
 19 (The following sidebar conference was held.)
 20 MS. WOLOSHIN: Your Honor, at this time the
 21 State would move to introduce the photographs that were
 22 shown to Marisol Ayala by Detective Campos. There are
 23 six photographs. I can show them to the Court. They

1 are not mug shots. They were simply Polaroids with the
 2 person's name on the back, if the Court would like to
 3 see them.

THE COURT: What do you want to do? Do you
 5 want to show them to her?

6 MS. WOLOSHIN: Correct.

7 THE COURT: Ask her if those were the
 8 photographs she was shown by the police?

9 MS. WOLOSHIN: Correct.

10 THE COURT: Do you have any objection?

11 MR. WILKINSON: No, Your Honor.

12 MS. WOLOSHIN: Okay. Thank you.

13 (The sidebar having concluded, examination
 14 continued.)

15 MS. WOLOSHIN: Your Honor, may I have these
 16 photographs marked?

17 THE COURT: I gather there's no objection?

18 MR. WILKINSON: Correct.

19 THE COURT: There are six of them?

20 MS. WOLOSHIN: There are six.

21 THE COURT: State's Exhibit 1 through 6.

22 THE CLERK: So marked, Your Honor.

23 (State's Exhibit Nos. 1 through 6 were admitted

1 into evidence.)

2 MS. WOLOSHIN: Your Honor, I'm just showing
 3 these to defense counsel.

4 (Pause.)

5 MS. WOLOSHIN: May I approach the witness, Your
 6 Honor?

7 THE COURT: You may.

8 BY MS. WOLOSHIN:

9 Q. Ms. Ayala, I'm showing you what has been marked
 10 as State's Exhibit 1 through 6. I'm going to ask you to
 11 take a look at them.

12 (Pause.)

13 BY MS. WOLOSHIN:

14 Q. Right now all I want you to do is look at them.
 15 Okay?

16 Are those the photographs that Detective Campos
 17 showed you?

18 A. I think so. *Not sure*

19 Q. Thank you.

20 When you looked at the photographs with
 21 Detective Campos, did you do that voluntarily?

22 A. I don't understand the question.

23 Q. Did Detective Campos force you to look at the

16 CROSS-EXAMINATION

18 BY MR. WILKINSON:

19 Q. Good afternoon. May I call you Marisol?

20 A. Yes.

21 Q. The photographs, you were asked awhile ago
 22 whether those were the same photographs you looked at
 23 awhile back, about a year ago. And you said, I think

1 so.

2 Is it true you really don't have a recollection
3 of what photos you looked at? Correct? You can't say
for certain those are the same photographs; correct?

5 **A. I would say they are the same.**

6 Q. And did you state previously that you thought
7 five of the photographs were of African American men and
8 one was an Hispanic man?

9 **A. To me they were black and one Hispanic.**

10 Q. Okay. You actually knew Christian DeJesus
11 prior to February 13th, 2003; correct?

12 A. I knew him -- I had seen him. I know that he
13 has either a cousin or a brother that looks very much
14 like him. And I don't know which one it is because I
15 really haven't talked to him. And I've seen them both
16 together.

17 Q. And the two of them look very much alike?

18 A. Yes.

19 Q. And you don't really know whether it was
20 Christian DeJesus who went in your house on
21 February 13th, do you?

22 A. I am not absolutely sure. I couldn't say that
it was definitely him.

1 Q. And it's true, isn't it not, that you wrote a
2 letter to Christian DeJesus?

3 A. Yes.

4 Q. And in that letter, isn't it true that you
5 apologized to Christian for accusing him of this crime?

6 A. Yes.

7 Q. And you had another letter that you had a
8 friend write; correct?

9 A. Exactly.

10 Q. Pertaining to this matter?

11 A. A letter that I had notarized.

12 Q. And you signed the letter; correct?

13 A. Yes.

14 Q. And you're aware of the contents of the letter;
15 correct?

16 A. Yes.

17 MR. WILKINSON: If I could have these marked as
18 a defense exhibit.

MS. WOLOSHIN: No objection.

19 THE COURT: Is that two documents or one?

20 MR. WILKINSON: There's two documents. I'm
21 sorry.

22 THE COURT: Okay. That will be Defendant's 1.

1 and 2.

2 THE CLERK: So marked, Your Honor.

3 (Defendant's Exhibit Nos. 1 and 2 were admitted
4 into evidence.)

5 (Pause.)

6 MR. WILKINSON: If I could approach the
7 witness, Your Honor?

8 THE COURT: You may.

9 BY MR. WILKINSON:

10 Q. Do you see the letter that's sitting in front
11 of you?

12 A. Do you want me to just look at it or read it?

13 Q. Do you recognize that letter?

14 A. Yes.

15 Q. And that is your handwriting; correct?

16 A. Yes.

17 Q. And you wrote that letter and mailed it to
18 Christian DeJesus; correct?

19 A. Yes.

20 Q. And do you remember when you mailed it?

21 A. This is not the one that I had notarized; but
22 this is my handwriting, and I did write this letter.

23 Q. Okay. And do you remember when you wrote the

1 letter?

2 A. I don't remember.

3 Q. Was it about a year ago?

4 A. No, not that long.

5 Q. About nine months ago?

6 A. No.

7 Q. Was it about six months ago?

8 A. No.

9 Q. Was it within the last three months?

10 A. Yes.

11 Q. So it was about three months ago?

12 A. Um-hmm.

13 Q. And could you please read the letter.

14 A. "Hello, Christian. How are you? I'm fine. I
15 hope that when you get this short lines you are well. I
16 am writing to tell you that I am very sorry that you're
17 in there being innocent. But I will go see you. And I
18 will also go to court the day of your hearing to tell
19 the truth that you are not the person that they are
20 looking for and that I do not remember the person. So
21 do not worry. You are innocent and you will be out
22 soon. I promise. I am going to make an appointment to
23 go to see you. Okay? May God bless you. I love you.

1 **Marisol."**

2 Q. And you wrote another letter on behalf of
3 Christian DeJesus; correct? You wrote a second
notarized letter?

5 A. **That's correct.**

6 Q. And --

7 A. **But it wasn't for him.**

8 Q. But it was on his behalf; correct?

9 A. **Um-hmm.**

10 Q. And you took the time to get it notarized, too?

11 A. **That's correct.**

12 Q. And you took the time to get it notarized
13 because what was in the letter was the truth?

14 A. **Proof of what?**

15 Q. No. That the contents of the letter are true?

16 A. **That's correct.**

17 Q. Okay.

18 MR. WILKINSON: If I could approach the
19 witness?

20 THE COURT: You may.

21 The first letter is what one?

22 MR. WILKINSON: First letter is Exhibit 1.

23 This is Exhibit 2.

1 (Pause.)

2 BY MR. WILKINSON:

3 Q. Do you read English, ma'am?

4 A. **A little.**

5 Q. Are you able to read the letter?

6 A. **Yes.**

7 Q. Would you please read the letter to the jury
8 that you wrote to Christian.

9 (The following answer is not through the
10 interpreter.)

11 THE WITNESS: To who it may concern. My name
12 is Marisol Ayala. And I am -- this man was not the man
13 to my house --

14 THE COURT REPORTER: I can't understand.

15 THE INTERPRETER: The court reporter can't
16 understand.

17 BY MR. WILKINSON:

18 Q. It may be a little bit easier to do it this
way. Did you write, "I don't want an innocent man to be
20 put in jail. Please forgive me for this mistake."

21 A. **Um-hmm.**

22 Q. When was the last time that you spoke to the
23 detective seated over here, Detective Campos?

1 A. **I think maybe two weeks ago, maybe less than**
2 **two weeks ago on the phone.**

3 Q. Did he tell you that unless you came in to
4 testify against Christian DeJesus that you'd be
5 arrested?

6 A. **That if I didn't come and testify?**

7 Q. Correct. That if you did not come and testify,
8 that you'd be arrested?

9 A. **I was arrested. I spent a night in jail.**

10 Q. My question was: Was there an earlier point in
11 time that Detective Campos said you would be arrested
12 unless you came in and testified against Christian
13 DeJesus?

14 A. **Not to me, to my mother.**

15 Q. And your mother conveyed that message to you?

16 A. **Yes, she did tell me.**

17 MR. WILKINSON: If I could just have one

18 moment.

19 (Pause.)

20 MR. WILKINSON: That concludes my questioning
21 for now.

22 THE COURT: Ms. Woloshin.

23 MS. WOLOSHIN: Thank you, Your Honor.

1 MS. WOLOSHIN: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4

5 REDIRECT EXAMINATION

6

7 BY MS. WOLOSHIN:

8 Q. Ms. Ayala, I'm handing you what is State's
9 Exhibits No. 2 and No. 5. Do those look like pictures
10 of black men or Hispanic men?

11 A. **No. 2 is black. You said No. 2?**

12 Q. I asked you to look at Nos. 2 and 5.

13 A. **No. 2 is black. But I think No. 5 could be**
14 **Hispanic.**

15 Q. And these were the pictures that Detective
16 Campos showed you; correct?

17 A. **I think so.**

18 Q. Okay.

19 MR. WILKINSON: Let me see those.

20 MS. WOLOSHIN: Sure.

21 BY MS. WOLOSHIN:

22 Q. You told -- or can you tell this jury how you
23 felt when a man you identified as Chris and pointed out

1 in a photograph to Detective Campos came to your house
 2 and held a gun to your head and Grace's, how did you
 3 feel?

4 **A. At the time of the incident?**

5 **Q. Yes.**

6 **A. Well, at the time when he had the gun on my**
 7 **little girl, I was nervous and I was scared.**

8 **Q. Okay. Do you feel that way today?**

9 **A. No.**

10 **Q. Did you feel that way when you wrote the**
 11 **letters?**

12 **A. No.**

13 **Q. Do you feel that way about the man that put a**
 14 **gun to your little girl's head?**

15 **A. I don't understand.**

16 **Q. Are you afraid of the man that put a gun to**
 17 **your head and to Grace's?**

18 **A. If I run into him straight on or if he comes**
 19 **back into my house, I would be scared.**

20 **Q. But how about being in the same room with him,**
 21 **would you be afraid?**

22 **A. In the same what?**

23 **Q. Room.**

1 **A. Well, of course.**

2 **Q. Are you afraid that the person that put a gun**
 3 **to your head and to Grace's will come back?**

4 **MR. WILKINSON: Objection. Relevancy.**

5 **THE COURT: Overruled.**

6 **THE WITNESS: It worries me.**

7 **BY MS. WOLOSHIN:**

8 **Q. Are you afraid?**

9 **A. Yes.**

10 **MS. WOLOSHIN: I have nothing further.**

11 **THE COURT: Mr. Wilkinson, anything else?**

12 **MR. WILKINSON: Just real quick.**

14 RECROSS-EXAMINATION

16 **BY MR. WILKINSON:**

17 **Q. You did testify just a couple moments ago that**
 18 **if you were in the same room as the man you would be**
 19 **scared; correct?**

20 **A. Well, of course.**

21 **Q. Of course. You're not scared now; correct?**

22 **A. I am not afraid right now.**

23 **MR. WILKINSON: No further questions.**

1 **THE COURT: Ms. Woloshin?**
 2 **MS. WOLOSHIN: Nothing further. Thank you.**

3 **THE COURT: Very well. The witness may step**
 4 **down.**

5 **Ms. Woloshin, the State may call its next**
 6 **witness.**

7 **MS. WOLOSHIN: Thank you. The State will call**
 8 **Solimari Torres.**

9 **(Pause.)**

10 **SOLIMARI TORRES, having been sworn under oath**
 11 **as a witness for the State, was called to the stand and**
 12 **testified as follows:**

13 DIRECT EXAMINATION

16 **BY MS. WOLOSHIN:**

17 **Q. Good afternoon, Solimari.**

18 **A. Hi.**

19 **Q. I'm going to ask, so that everyone can hear**
 20 **you, if you can pull the microphone closer to you so**
 21 **that everyone over here can hear you. Okay?**

22 **A. Yes.**

23 **Q. Can you tell the jury how old you are.**

1 **A. Seventeen.**

2 **Q. And can you tell the jury, do you have any**
 3 **brothers or sisters?**

4 **A. Yes. I have a six-year-old sister.**

5 **THE COURT: Pull that microphone a little bit**
 6 **closer to you.**

7 **THE WITNESS: I have a six-year-old sister.**

8 **BY MS. WOLOSHIN:**

9 **Q. What's her name?**

10 **A. Grace Marie Ayala.**

11 **Q. What is your mother's name?**

12 **A. Marisol Ayala.**

13 **Q. Last year in February, around Valentine's Day,**
 14 **were you living with your mom and your sister?**

15 **A. Yes.**

16 **Q. And do you remember where you were living at**
 17 **that time?**

18 **A. Yes.**

19 **Q. Where?**

20 **A. 116 North Scott Street.**

21 **Q. And do you remember talking to Detective Campos**
 22 **last year?**

23 **A. Yes.**

1 Q. And do you remember why you talked to him,
2 about what?
3 A. **About an incident that occurred at my house.**
4 Q. And can you tell the jury about the incident
5 that happened in your house that you spoke to Detective
6 Campos about. Can you tell the jury what happened at
7 your house.
8 A. **A man came in with a gun in my house.**
9 Q. And were you in the house at that time when the
10 man came in with a gun?
11 A. **Yes.**
12 Q. Where were you in the house?
13 A. **I was in the kitchen.**
14 Q. And what were you doing in the kitchen?
15 A. **I was cooking something.**
16 Q. And who else was in the house when the man came
17 in with a gun?
18 A. **My sister.**
19 Q. Grace?
20 A. **Um-hmm.**
21 Q. And how about your mom?
22 A. **She was outside. She came in.**
23 Q. Do you know why she came in?

1 A. **Because the man forced her in.**
2 Q. How did he force her in?
3 A. **With a gun.**
4 Q. As best as you can -- I know this is hard. If
5 you could keep your voice up, Solimari.
6 A. **Yes.**
7 Q. Did you see the man with the gun do anything
8 with the gun to your mom?
9 A. **At the time, I just passed out.**
10 Q. I'm sorry?
11 A. **At that time, I just passed out.**
12 Q. Okay. Did the man do anything to Grace with
13 the gun?
14 A. **Yes.**
15 Q. What did he do?
16 A. **He put the gun to my sister's head.**
17 Q. Did he do anything with the gun to you?
18 A. **No.**
19 Q. Do you remember or?
20 A. **No.**
21 Q. Why did you pass out?
22 A. **I don't know. I was pregnant at that time.**
23 Q. But what --

1 A. **I didn't pass out. I just couldn't -- then I
2 started running out of the house.**
3 Q. But was there something that you or that you
4 saw that caused you to fall down?
5 A. **I guess seeing my sister so scared.**
6 Q. Your sister so scared. And why was your sister
7 so scared?
8 A. **Because she was grabbed.**
9 Q. By the man with the gun?
10 A. **Yes.**
11 Q. Did the man with the gun point the gun at your
12 mom?
13 A. **I can't remember.**
14 Q. When you talked to Detective Campos, did you
15 tell him about what had happened to you, what had
16 happened during this time when the man came into your
17 house with the gun?
18 A. **Yes.**
19 Q. And when you talked to him, did you talk to him
20 voluntarily or did he force you to talk to him?
21 A. **Voluntary.**
22 Q. You said that you ran out of the house?
23 A. **Yes.**

1 Q. Did you see -- when you ran out of the house,
2 did you see the man with the gun go anywhere, get in a
3 car, walk away?
4 A. **He was trying to call me, but I kept
5 on running. But he got in the car.**
6 Q. When you say "he got in the car," when you say
7 he was trying to call you, do you mean on a phone or out
8 loud?
9 A. **Out loud.**
10 Q. Screaming your name?
11 A. **No, not my name.**
12 Q. What?
13 A. **He said, Come back over here.**
14 Q. Were you in front when you were running out of
15 the house or was he in front? Do you understand the
16 question?
17 A. **In front of the house?**
18 Q. No. I mean, who left the house first, was it
19 you or the man with the gun?
20 A. **I did.**
21 Q. And why did you run out of the house?
22 A. **'Cause I was scared.**
23 Q. Why were you scared?

1 A. I didn't want nothing to happen to me. I was
2 pregnant.

3 Q. And the man had a gun; right?

4 A. Um-hmm.

5 Q. So you ran out of the house. Did he come after
6 you out of the house?

7 A. I just started running.

8 Q. And he was behind you calling you?

9 A. No. He just called me and then left in the
10 car.

11 Q. And when you say he called you, what did he
12 say?

13 A. "Come back over here."

14 Q. And what did you do?

15 A. I left.

16 Q. To get away?

17 A. Um-hmm.

18 Q. And you said you saw him get in a car?

19 A. Yes.

20 Q. Do you remember what the car looked like?

21 A. It was blue.

22 MS. WOLOSHIN: Your Honor, I think, without
23 objection, the State offers the next photograph into

1 nickname of the person that you thought it was that came
2 into your house with gun?

3 A. Yes, I did.

4 Q. And what name did you give him?

5 A. I heard around the block he was called --

6 MR. WILKINSON: Objection. I think she's
7 getting ready to give hearsay testimony.

8 THE COURT: Why don't you ask a different
9 question. Clarify just the source of her knowledge.

10 MS. WOLOSHIN: Okay.

11 BY MS. WOLOSHIN:

12 Q. Did you personally know this person's nickname?

13 A. No.

14 Q. You heard it from someplace else?

15 A. Yes.

16 Q. And did you provide that nickname to Detective
17 Campos?

18 A. Yes.

19 Q. And what nickname did you give Detective
20 Campos?

21 A. Christian.

22 Q. Can you spell that for the court reporter and
23 the jury.

1 evidence.

2 THE COURT: No objection?

3 MR. WILKINSON: That's correct, no objection.

4 THE COURT: That will be the next State's
5 exhibit.

6 THE CLERK: So marked State's Exhibit 7.

7 (State's Exhibit No. 7 was admitted into
8 evidence.)

9 MS. WOLOSHIN: Your Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 BY MS. WOLOSHIN:

13 Q. Solimari, I'm handing you a photograph which is
14 State's Exhibit No. 7. Can you tell the jury what that
15 photograph is of?

16 A. That's his car.

17 Q. Okay. Whose car?

18 A. The guy that went in my house.

19 Q. And is that the car -- does that photograph
20 accurately depict the car that the man with the gun got
21 into that night?

22 A. Yes.

23 Q. Did you tell Detective Campos a name or a

1 A. C-H-R-I-S-T-I-A-N.

2 Q. And did you give Detective Campos a description
3 of the car?

4 A. Yes, I did.

5 Q. And did Detective Campos show you some
6 photographs of people to look at?

7 A. Yes.

8 Q. And what was the purpose of you looking at the
9 photographs?

10 A. He came to my house one day and showed me some
11 pictures, and I picked out the pictures.

12 Q. He asked you to look at the photographs for
13 what reason?

14 A. To pick the person who was...

15 Q. To pick what?

16 A. He showed me the pictures of different people,
17 and I picked out the person.

18 Q. The person that did what?

19 A. That went in my house.

20 MS. WOLOSHIN: Your Honor, may I approach the
21 witness? Thank you.

22 BY MS. WOLOSHIN:

23 Q. Solimari, I'm handing you, although they're out

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1 of order now, some photographs that have already been
 2 marked State's Exhibit 1 through 6. Can you just take a
 3 look at those.

(Pause.)

5 THE WITNESS: What do you want me to do?
 6 BY MS. WOLOSHIN:
 7 Q. Just look at them for now. Are those the
 8 photographs that Detective Campos showed you when he
 9 came to your house?

10 A. I can't remember.

11 Q. I'm sorry. They were all what?

12 A. I can't remember if these were all the pictures
 13 he showed me.

14 Q. Okay. Is the person that you picked out and
 15 showed to Detective Campos, is he in the group of
 16 photographs?

17 A. Yes.

18 Q. Can you pull that one separate from all the
 19 others and tell -- look on the back and tell me what
 20 number that's marked as?

21 A. No. 3.

22 Q. Okay. And looking at that photograph, is that
 23 the person that came into your house and put a gun to

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1 your sister Grace's head?

2 A. Yes.

3 Q. The person that's in that photograph, is he in
 4 the courtroom today?

5 A. Yes.

6 Q. Can you point him out for me?

7 A. He's sitting with a suit (indicating).

8 Q. There are two men over here with a suit. Is it
 9 this one or is it this one (indicating)?

10 A. On your right.

11 Q. This one (indicating). This is the man that
 12 came into your house and put a gun to Grace's head?

13 A. Yes.

14 Q. After he came to your house that night, did you
 15 see him after that?

16 A. Yes. I saw him a couple times.

17 Q. Did he ever come up and talk to you?

18 A. Yes. He came and talked to me about -- he
 showed me his daughter's pictures and told me that he

20 has a daughter and that he feel bad for what he did.

21 Q. And did he say anything else?

22 A. That he felt bad.

23 Q. And when he said that he felt bad for what he

1 did, do you know what he was talking about, what he was
 2 referring to?

3 A. He was drunk that night.

4 Q. What night?

5 A. That it happened, the incident.

6 Q. And that he was saying that he felt bad about
 7 that night?

8 A. Um-hmm.

9 Q. When you saw him get into the car the night of
 10 the incident, did you see him drive away?

11 A. I just started running.

12 Q. Did you hear anything come from his car?

13 A. When I got to the restaurant down the street
 14 from my house.

15 Q. What did you hear?

16 A. Where I called the police from. I heard some
 17 gunshots, but I'm not sure.

18 Q. Okay.

19 MS. WOLOSHIN: If I can just have a moment,
 20 Your Honor.

21 (Pause.)

22 MS. WOLOSHIN: Your Honor, thank you. I have
 23 nothing further.

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1 THE COURT: Mr. Wilkinson.

2

3 CROSS-EXAMINATION

4

5 BY MR. WILKINSON:

6 Q. Good afternoon, Solimari.

7 You said that on February 13th that you felt
 8 faint or dizzy and fell down?

9 A. I just felt dizzy, like I felt like I was going
 10 to pass out.

11 Q. How long -- did you fall down on the floor?

12 A. No. No. Everything went --

13 Q. You felt dizzy but you stayed standing the
 14 whole time?

15 A. Yes.

16 Q. When the officer showed you the photos, when he
 17 showed you the photo line-up, he only showed you six
 18 photos; correct?

19 A. I can't remember.

20 Q. Do you remember if he showed you more than ten
 21 photos?

22 A. No, he didn't show me more than ten.

23 Q. So it was just a few photos. Then it was less

1 than ten photos that he showed you; correct?

2 A. **I guess so.**

3 Q. And your mother, was she right next to you when
you were looking at the photos?

5 A. **No.**

6 Q. Was she in the room with you?

7 A. **No. He showed us pictures in separate rooms.**

8 Q. You stated that you -- alleged a little bit
earlier that you saw Christian DeJesus after the
10 incident?

11 A. **Yes.**

12 Q. You alleged that he had been drinking and you
13 were talking to him?

14 A. **I was talking to him?**

15 Q. Yeah. You stated that you were having a
16 regular conversation with Christian DeJesus after this
17 incident --

18 A. **Yes.**

19 Q. -- this alleged incident?

20 A. **He came up to me and talked to me.**

21 Q. Where was that at?

22 A. **On Third.**

23 Q. On Third Street?

1 2002, that you were convicted in a -- or found
2 delinquent in family court for possession with intent to
3 deliver cocaine?

4 A. **Yes, I did.**

5 Q. You were also found delinquent to conspiracy
6 second related to the possession with intent to deliver
7 cocaine?

8 A. **Yes.**

9 MR. WILKINSON: No further questions.

10 THE COURT: Ms. Woloshin.

11

12 REDIRECT EXAMINATION

13

14 BY MS. WOLOSHIN:

15 Q. Solimari, regarding those charges, you actually
16 pled guilty; correct?

17 A. **Yes, I did.**

18 Q. Do you know why the defendant came up and
19 talked to you on Third Street? Did he tell you why?

20 A. **Because he felt bad.**

21 Q. And how do you feel sitting in this courtroom
22 right now?

23 A. **A little bit nervous.**

1 A. **Um-hmm.**

2 Q. How long did you allegedly speak to him?

3 A. **I'd say about ten minutes.**

4 Q. So you spoke to him for about ten minutes?

5 A. **Um-hmm.**

6 Q. And did you see him walking up to you on Third
7 Street?

8 A. **I was going by. He stopped and showed me his
9 daughter's picture.**

10 Q. Okay. Basically, you just had a regular
11 conversation with him; correct?

12 A. **Um-hmm.**

13 Q. And you went on your way after that; correct?

14 A. **Yes, I did.**

15 Q. And you never went to the police, did you?

16 A. **To the police?**

17 Q. After you allegedly spoke to Christian, you
18 never went to the police; correct, on Third Street?
When you spoke to him on Third Street and you had your
19 conversation, you went on your way and never contacted
21 the police after that; correct?

22 A. **No.**

23 Q. Is it true that just a couple years ago, in

1 Q. And how did you feel the night that the
2 defendant over there came into your house with a gun?

3 A. **Scared.**

4 Q. And how do you feel being in the courtroom
5 today with him in the same courtroom?

6 A. **Nervous.**

7 MS. WOLOSHIN: I have nothing further.

8 THE COURT: Mr. Wilkinson, anything else?

9 MR. WILKINSON: One second, Your Honor.

10 (Pause.)

11 MR. WILKINSON: No further questions.

12 THE COURT: All right, Ms. Torres. You may now
13 step down. Thank you.

14 MS. WOLOSHIN: Your Honor, may I just have a
15 moment with the bailiff?

16 (Pause.)

17 THE COURT: You may call your next witness.

18 MS. WOLOSHIN: Thank you. The State calls
19 Detective Campos.

20 WILFREDO CAMPOS, having been sworn under oath
21 as a witness for the State, was called to the stand and
22 testified as follows:

23

DIRECT EXAMINATION

1 BY MS. WOLOSHIN:

2 Q. Good afternoon, Detective Campos.

3 A. **Good afternoon.**4 Q. Can you tell the jury how long you've worked
5 for the Wilmington Police Department.6 A. **Since September 30th, 1996.**7 Q. And can you tell the jury what division,
8 department are you currently in at the Wilmington Police
9 Department.10 A. **I'm currently assigned to the criminal
11 investigation division.**

12 Q. What does that mean?

13 A. **I'm assigned to investigate robberies,
14 burglaries, any type of crimes that occur in the city of
15 Wilmington.**16 Q. And the criminal investigations unit is often
17 referred to as the detectives unit?18 A. **Yes.**19 Q. And how long have you been in the detectives
20 unit?21 A. **I've been in the detectives unit since**1 Q. And did you go to her house? Did she come to
2 the police station?3 A. **Yes. I went to her house.**4 Q. And can you describe for the jury her level of
5 cooperation with your investigation.6 A. **At that time?**

7 Q. Yes.

8 A. **At that time she was cooperating. She
9 basically explained to me what happened that night.**

10 Q. And did she provide you any nicknames?

11 A. **She told me she thought the guy's name was
12 Chris.**13 Q. And at that same time did you speak with
14 Solimari Torres, her daughter?15 A. **I did.**16 Q. And can you describe her level of cooperation
17 at that time.18 A. **She told me also what happened that night.**

19 Q. So she was cooperative?

20 A. **Yes.**21 Q. During your investigation, did you ever
22 interview Grace Almodovar?23 A. **No, I didn't.**1 **April 2001.**2 Q. And were you assigned to investigate the case
3 that we're here about today?4 A. **Yes.**5 Q. And do you remember when you got involved in
6 the case?7 A. **I got involved, I believe it was -- check my
8 report -- shortly afterwards. The 20th of February is
9 when I first had my initial contact with the victims.**10 Q. And when you're talking about the victims, who
11 are you referring to?12 A. **I am referring to Marisol Ayala, Grace
13 Almodovar, and Solimari Torres.**

14 Q. Do you speak Spanish?

15 A. **Yes, I do.**

16 Q. Are you fluent in Spanish?

17 A. **Yes.**18 Q. Did that help you when you were investigating
this case, since some of the witnesses speak Spanish?19 A. **Yes.**

20 Q. When was the first time you met Marisol Ayala?

21 A. **The first time I spoke to Marisol Ayala was on**22 **February 20th, 2003.**

1 Q. Is that because she's so young?

2 A. **Yes. And also because of her mother said she
3 was having nightmares about the incident, and she
4 wouldn't like me to interview her at the time. It was
5 her request.**6 Q. Okay. And your investigation of this case went
7 from February 20th until when?8 A. **I believe about a month later, about March 6th.**9 Q. On March 6th, based upon your investigation,
10 did you stop a certain vehicle?11 A. **Yes, I did.**

12 Q. And what vehicle was that?

13 A. **It was a 1996 Chrysler New Yorker.**14 Q. And when you stopped the car, you were acting
15 as a police officer, obviously?16 A. **Yes.**

17 Q. And do you recall who was driving that vehicle?

18 A. **Christian DeJesus.**19 Q. And is Christian DeJesus in this courtroom
20 today?21 A. **Yes, he is.**22 Q. Can you point him out for the members of the
23 jury.

1 A. He is seated at defense table in the gray suit
 2 with the white shirt.

3 Q. Since there are two people over here in suits,
 4 is he on the left or is he on the right?

5 A. To your right.

6 Q. So this one (indicating)?

7 A. Right.

8 Q. That's Christian DeJesus?

9 A. Yes.

10 Q. And he was the driver of the Chrysler New
 11 Yorker?

12 A. Yes, he was.

13 MS. WOLOSHIN: May I approach the witness, Your
 14 Honor?

15 THE COURT: You may.

16 BY MS. WOLOSHIN:

17 Q. Detective Campos, I'm handing you what is
 18 State's Exhibit 7. Can you tell the jury what that
 19 photograph depicts?

20 A. That is the vehicle I stopped on March 6th with
 21 Christian DeJesus as the driver.

22 Q. Was that car ever described to you by either
 23 Marisol Ayala or Solimari Torres?

1 A. Yes.

2 Q. By which one or --

3 A. Solimari Torres described the vehicle.

4 MS. WOLOSHIN: Your Honor, may I publish this
 5 photograph to the jury?

6 THE COURT: Yes.

7 MS. WOLOSHIN: Thank you.

8 (Pause.)

9 BY MS. WOLOSHIN:

10 Q. So on March 6th, 2003, you stopped this vehicle
 11 and the defendant was the driver of that car?

12 A. Yes, ma'am.

13 Q. Did you conduct or did you execute any search
 14 warrants with regard to this case?

15 A. Yes.

16 Q. And when was that search warrant executed?

17 A. That was executed on March 6th, I believe.

18 Yes. March 6th of 2003.

19 Q. And what was the address of the residence that
 20 you executed the search warrant on?

21 A. 1702 West Third Street.

22 Q. And was there a specific room that you
 23 searched?

1 A. Yes. I searched the -- actually, the entire
 2 house. The defendant's bedroom was a second-floor
 3 bedroom that he described towards the front of the home.

4 Q. Okay. And just so that we're clear, I only
 5 want to discuss what you found in the defendant's room.

6 A. Correct.

7 Q. And was there any type of lock that was on that
 8 door?

9 A. Yeah. There was a padlock. And we had to
 10 force the door open to gain entry into it.

11 Q. And did you find anything in that room?

12 A. Yes, I did.

13 Q. And did it relate to this case?

14 A. Yes.

15 Q. The case you were investigating?

16 A. Yes.

17 Q. And what did you find?

18 A. I found several different type of ammunitions
 19 for a handgun.

20 (Pause.)

21 MS. WOLOSHIN: Just for the record, with the
 22 Court's permission, I'm showing defense counsel what is
 23 proposed as the next State's exhibit.

1 MR. WILKINSON: I don't object.

2 MS. WOLOSHIN: Your Honor, at this time the
 3 State moves into evidence, I guess, three different
 4 packages of evidence. I don't know if you --

5 THE COURT: When it gets in, will there be any
 6 objection? I know you haven't heard the witness testify
 7 that that's what he found, but --

8 MR. WILKINSON: I'm sorry, Your Honor. Is
 9 there going to be any objection as having that admitted
 10 as evidence?

11 THE COURT: Yes.

12 MR. WILKINSON: No. There's no objection.

13 MS. WOLOSHIN: Does the Court want to mark this
 14 as one exhibit with different -- because it's all in the
 15 same packages -- with A, B, and C?

16 THE COURT: Unless you're going to refer to
 17 each item separately, we can mark it as joint. If
 18 you're going to do it each individual item, we'll do it
 19 separately.

20 MS. WOLOSHIN: Okay. Then I'll do it
 21 separately.

22 (Pause.)

23 THE CLERK: So marked State's Exhibit 8, 9, and

1 10.

2 (State's Exhibit Nos. 8, 9, and 10 were
3 admitted into evidence.)

4 MS. WOLOSHIN: May I approach the witness?

5 THE COURT: You may.

6 MS. WOLOSHIN: Thank you.

7 BY MS. WOLOSHIN:

8 Q. Detective Campos, I'm handing you what is
9 State's Exhibit 8, 9, and 10. And specifically
10 referring to the envelope first, there's a green tag on
11 that envelope; is that correct?

12 A. Yes.

13 Q. Can you tell and explain to the jury what the
14 purpose of that green tag is.15 A. This is the purpose of recording our evidence
16 that we recover that we submit to our records division.17 Q. And in the Wilmington Police Department; is
18 that correct?

19 A. Yes.

20 Q. And all exhibits were in that envelope when you
21 brought it to court today; correct?

22 A. Yes.

23 Q. And the green tag, is that filled out in your

1 Q. Can you describe where you found those items in
2 the defendant's room.3 A. They were found in -- the ceiling tiles, some
4 of them were missing. Some of them were pulled back. I
5 could see a clear bag in the ceiling tile from where I
6 was standing. Reached up there, grabbed it, and it
7 contained the items.

8 Q. The ammunition?

9 A. Correct.

10 Q. And ammunition is used for a firearm; correct?

11 A. Correct.

12 Q. It's for a firearm?

13 A. Correct.

14 Q. And are there different types of ammunition?

15 You said there was 9 millimeter and a .38 caliber?

16 A. Yes.

17 Q. And that is two different kinds of ammunition?

18 A. Correct.

19 Q. In addition to executing a search warrant, did
20 you have an opportunity to interview the defendant that
21 day?

22 A. Briefly.

23 Q. Okay. And I just want -- the only thing I want

1 handwriting?

2 A. Yes, it is.

3 Q. And can you explain to the jury what it says on
4 that evidence tag.

5 A. Read from top to bottom?

6 Q. Just the identifying information.

7 A. It says, 150-count box of American Eagle 9
8 millimeter rounds which contained 20 rounds; three
9 .38-caliber special Winchester rounds; three .38-caliber
10 special normal rounds; and one clear --

11 Q. Let's --

12 A. One Pep Boys receipt with customer's name of
13 Christian DeJesus.14 Q. Is there a person's name on the front of that
15 green tag?

16 A. Yes, there is.

17 Q. What name is that?

18 A. Christian DeJesus.

19 Q. And that's to record the items where you found
20 it?

21 A. Yes.

22 Q. And in his room?

23 A. Yes.

1 to talk about is did the defendant identify which room
2 was his in the residence?

3 A. Yes.

4 Q. And which room did he identify as his during
5 your interview?6 A. He didn't tell the room. He said it was the
7 second-floor bedroom. He said it had a padlock on it
8 because other people resided there, and that it was his
9 bedroom, the second floor.10 Q. As part of your investigation, did you prepare
11 some or get together some photographs for Solimari
12 Torres and Marisol Ayala to view?

13 A. Yes.

14 Q. And what was the purpose of putting these
15 photographs together to ask them to look at them?

16 A. To try to identify a suspect.

17 Q. Before you prepared those photographs and put
18 them together, did they give you a general description
19 of what the person looked like?

20 A. Yes.

21 Q. And do you remember what that description was?

22 A. That he was possibly a Dominican male, about
23 five -- five-eight, and kind of pointed towards me and

1 said my color skin, black hair, black short hair.

2 That's pretty much it.

3 Q. And is there anything that you do in
determining what photographs to show to a witness? Is
5 there anything that you do with the description that
6 they give you and the photographs that you showed them?

7 A. Yes. What I try to do is I try to keep them
8 all consistent with the complexion, height, weight,
9 pretty much everything the same to give the person a
10 fair shot.

11 Q. When you presented those photographs to Marisol
12 and to Solimari, did you tell them anything about the
13 photographs of who they were or anything like that?

14 A. I had the six photos. I went to the house. I
15 took them in separate rooms. And I showed them the
16 photos, and I told them to look through the photos and
17 try to see if the person that came into their house was
18 in the photos; and if not, that it was okay; that it was
19 okay if he wasn't.

20 Q. Detective Campos, I'm handing you what are
21 State's Exhibits 1 through 6. I'm just going to just
22 ask you to look at those photographs and tell the jury
23 whether those are the photographs that you showed to

1 Q. And she pointed to No. 3?

2 A. Yes, she did.

3 Q. And how quickly did she do that?

4 A. Just about at the same time as Solimari Torres.

5 Q. What did she say?

6 A. She said that that was the gentleman that came
7 to her house, the guy that came into her house.

8 Q. When you spoke to Marisol Ayala, did you speak
9 to her in Spanish or did you speak to her in English?

10 A. I spoke to her in Spanish.

11 Q. So you're sure -- so that you knew she
12 understood you and you understood her?

13 A. She felt more comfortable in Spanish.

14 Q. And can you tell the jury, looking at
15 photograph No. 3, whose name is on the back?

16 A. Name is Christian DeJesus.

17 Q. And that photograph, does that photograph
18 accurately depict the defendant seated in the courtroom?

19 A. Yes.

20 Q. In addition to speaking with Marisol Ayala
21 during your investigation, did you have an opportunity
22 to recently speak with her?

23 A. Yes.

1 Solimari Torres and to Marisol Ayala.

2 A. Yes, they are.

3 Q. And did Marisol Ayala or Solimari Torres
4 identify or point out any of those photographs to you as
5 a person that --

6 A. Yes, they did.

7 Q. And which photograph did they --

8 A. No. 3.

9 Q. Was that both of them or did one of them --

10 A. That was both of them.

11 Q. Can you describe to this jury -- I guess we can
12 take Solimari Torres first -- how she identified it?

13 Was it quickly? Did it take a long time? What did she
14 say when she identified that photograph?

15 A. She looked through the photographs and she
16 pointed to No. 3 and said, He's the guy that came into
17 my house.

18 Q. And how long did it take her to identify that
photograph?

19 A. Seconds.

20 Q. And how about with Marisol Ayala, did she look
21 at all six photographs?

22 A. Yes, she did.

1 Q. And did she -- can you tell the jury how she
2 seemed or she acted when you spoke to her about coming
3 to court and testifying.

4 MR. WILKINSON: Objection. Appears to be
5 asking for speculation on the detective guessing on how
6 she felt.

7 MS. WOLOSHIN: I can ask it --

8 THE COURT: Maybe it was over the telephone.

9 MS. WOLOSHIN: I think he can explain that if I
10 could ask him more questions leading up to this.

11 THE COURT: I'm a little bit uncertain about
12 just how this witness can form an opinion based on a
13 telephone conversation. Why don't you ask him some
14 questions to develop it.

15 MS. WOLOSHIN: Thank you.

16 BY MS. WOLOSHIN:

17 Q. You actually spoke to her over the telephone;
18 is that correct?

19 A. That's correct.

20 Q. How long ago was that compared to today?

21 A. About two weeks ago.

22 Q. Other than on the telephone, have you had any
23 other conversations with her?

1 A. **Other than on the telephone?**
 2 Q. Yes.
 3 A. **Recently?**
 4 Q. Yes. Did you see her on Tuesday?
 5 A. **Yes, I did, on Tuesday.**
 6 Q. Did you speak with her on Tuesday?
 7 A. **Yes.**
 8 Q. And did you speak with her in Spanish?
 9 A. **Yes.**
 10 Q. On Tuesday?
 11 A. **Correct.**
 12 Q. And how about today?
 13 A. **Today, no.**
 14 Q. You didn't speak with her today?
 15 A. **No.**
 16 Q. On Tuesday, when you spoke to her, you were
 17 speaking to her face to face?
 18 A. **Yes.**
 19 Q. And how did she seem to you when you spoke to
 20 her on Tuesday?
 21 A. **She seemed scared.**
 22 Q. Now, were there any physical things that she
 23 was doing while you were talking to her?

1 A. **Yes. She was crying.**
 2 Q. And did she explain to you why she was crying?
 3 A. **Yes.**
 4 Q. And what did she say?
 5 MR. WILKINSON: Objection. Hearsay.
 6 THE COURT: Depends on what the answer is.
 7 I'll have to hear you at sidebar.
 8 (The following sidebar conference was held.)
 9 THE COURT: Do you know what the answer is
 10 going to be?
 11 MS. WOLOSHIN: Yes. She's going to say she was
 12 scared of him in coming to court and testifying against
 13 him. She was afraid of him.
 14 THE COURT: Did she say why?
 15 MS. WOLOSHIN: She said --
 16 THE COURT: Did she say she'd been threatened
 17 by him?
 18 MS. WOLOSHIN: No, she did not.
 19 THE COURT: Since her fear may be developed
 20 from something in her own mind without any evidence of a
 21 direct threat from the defendant, then that's
 22 inadmissible.
 23 MS. WOLOSHIN: Okay.

1 (The sidebar having concluded, examination
 2 continued.)
 3 MS. WOLOSHIN: Your Honor, if I could just have
 4 one moment.
 5 (Pause.)
 6 MS. WOLOSHIN: I don't believe I have anything
 7 further. Thank you.
 8 THE COURT: Mr. Wilkinson.
 9
 10 CROSS-EXAMINATION
 11
 12 BY MR. WILKINSON:
 13 Q. So, Detective Campos, you first spoke to
 14 Marisol and Solimari, that was about four days after the
 15 alleged incident, I mean after February 14th?
 16 A. **Yeah, on the 20th.**
 17 Q. Okay, the 20th. So it was about six days after
 18 the alleged incident on February 14th?
 19 A. **Correct, sir.**
 20 Q. And that's when you did the photo line-up?
 21 A. **No, not at that time.**
 22 Q. What date did you actually do the photo
 23 line-up?
 1 A. **March 6th.**
 2 Q. March 6th?
 3 A. **March 6th.**
 4 Q. So that was about three weeks, approaching a
 5 month after February 14th?
 6 A. **That's correct.**
 7 Q. Okay. And you showed them a total of six
 8 photographs; correct?
 9 A. **That's correct.**
 10 Q. And you testified a little bit earlier that you
 11 told them that you remember saying to them -- one
 12 second.
 13 (Pause)
 14 BY MR. WILKINSON:
 15 Q. You said something to the extent of you don't
 16 have to pick one out; correct?
 17 A. **Yes.**
 18 Q. Or something to that extent?
 19 A. **Um-hmm.**
 20 Q. And you said that because you are aware that
 21 many individuals feel compelled to pick somebody out of
 22 a line-up; correct?
 23 A. **In some cases, yes.**

1 Q. That's a concern that you have with everybody,
 2 that they may feel compelled to pick the closest looking
 3 person; correct?

4 A. **They may feel compelled to pick someone out.**

5 Q. And part of that is a fear that you'll -- that
 6 they'll pick out the closest looking person to
 7 whoever --

8 A. **No. The fear is that they might just pick
 9 someone out just to pick them out.**

10 Q. Okay. And so it's no concern of you that -- it
 11 doesn't concern you that someone feels compelled for
 12 whatever reason, whether to make you feel or they feel
 13 they could pick someone out. Is that a concern that you
 14 have when you do a photo line-up?

15 A. **Yes.**

16 Q. So would it also concern you that if an
 17 individual feels compelled to pick somebody out, they
 18 will look at the line-up and just pick out the person
 19 that most closely resembles the true perpetrator?

20 A. **That could happen, yes.**

21 Q. And that is something you're concerned with;
 22 correct?

23 A. **Yes.**

1 Q. Okay. 'Cause your goal is to find the true
 2 perpetrator; correct?

3 A. **That's correct.**

4 Q. And though this is a consideration that you're
 5 scared that a witness might just pick out an individual
 6 that looks closest to the real perpetrator, you still
 7 only showed Solimari and Marisol a total of six
 8 photographs; correct?

9 A. **That's correct.**

10 Q. And out of the six, a handful, I don't
 11 remember, two or three, were African American
 12 individuals; correct?

13 A. **Two of them.**

14 Q. Two of them. Okay. So they both had said that
 15 it was an Hispanic individual that went into their house
 16 on February 14th; correct?

17 A. **That's correct.**

18 Q. So basically you showed them only four pictures
 of Hispanic individuals; correct?

19 A. **That's correct.**

20 Q. And out of the Hispanic individuals, they would
 21 have a 25 percent chance of picking any one of the
 22 Hispanic individuals; correct, even under a random -- if

1 it was a random?

2 A. **Well, if you also think about it, they said
 3 they've seen him before on several occasions.**

4 Q. The fact is you have -- you only showed them
 5 pictures of four Hispanic individuals, but you have
 6 access to a lot more photographs of different Hispanic
 7 individuals; correct?

8 A. **At that point that's all I had.**

9 Q. Okay. So the photographs in your department to
 10 do a line-up, you only have photographs of --
 11 photographs of four Hispanic individuals?

12 A. **I myself at that time, I had four photographs
 13 of Hispanic males that matched the defendant's
 14 description. Now, does anyone else have some? They may
 15 have them locked up somewhere. But at that time I only
 16 have four Hispanic males that matched the description.**

17 Q. The house where you did the search warrant
 18 where Mr. DeJesus lived, there were other individuals
 19 that lived in that house; correct?

20 A. **Yes.**

21 Q. And Mr. DeJesus told you that he rented a room
 22 in that house and he shared it with other individuals?

23 A. **That's correct.**

1 Q. And when did you -- what was the date that you
 2 did the search of the room?

3 A. **March 6th.**

4 Q. March 6th. Do you remember what time it was?

5 A. **If I could refer to my report.**

6 Q. Oh, yes. Go ahead.

7 A. **About 9:35 p.m.**

8 Q. 9:35. And you don't really have any personal
 9 knowledge who has access to a key to the padlock that
 10 was on the door, do you?

11 A. **No.**

12 Q. And you don't know when the last time -- was
 13 there anyone in the room when you went into the room?

14 A. **No, sir.**

15 Q. And you don't know when the last time anyone
 16 was in that room?

17 A. **No. I wouldn't have --**

18 Q. You wouldn't have any idea; correct?

19 A. **No.**

20 Q. You wouldn't know who the last person in the
 21 room could have been?

22 A. **That's correct.**

23 Q. And in terms of the bullets, you say they were

1 found in the ceiling --

2 A. Yes.

3 Q. -- the ceiling tiles?

4 You have no idea how long they were sitting
5 there, do you?

6 A. No.

7 Q. Going back to the alleged incident on
8 February 14th, you never retrieved a gun associated with
9 that alleged incident; is that correct?

10 A. That's correct.

11 Q. If there was an incident that occurred, you
12 would have no idea whether those bullets would even fit
13 that gun; correct?

14 A. That's correct. *why you fuck that*

15 Q. And you spoke to Marisol in Spanish 'cause you
16 thought you would have a better communication with her
17 in Spanish?

18 A. She told me she felt better speaking to me in
19 Spanish. She felt more comfortable.

20 Q. Okay. And you wrote up an affidavit of
21 probable cause; correct --

22 A. Yes.

23 Q. -- in regard to this matter?

REDIRECT EXAMINATION

4 BY MS. WOLOSHIN:

5 Q. You wrote a police report, supplement report;
6 correct?

7 A. Yes.

8 Q. Can you tell the jury how many pages that
9 report contains?

10 A. Ten pages.

11 Q. Anywhere in that report do you refer to Grace
12 Almodovar as Marisol Ayala's granddaughter?

13 A. No.

14 Q. Other than the ammunition that you found in the
15 defendant's room, ammunition for a gun, did you find any
16 documents?

17 A. Yes.

18 Q. And what kind of documents did you find?

19 A. A receipt.

20 Q. What kind of a receipt?

21 A. A Pep Boys receipt.

22 Q. That was found in the defendant's room?

23 A. That's correct.

1 And you did refer in that affidavit to Grace as
2 Marisol's granddaughter; correct?

3 A. If I can take a look at it.

4 MR. WILKINSON: If I could approach the
5 witness?

6 THE COURT: You may.

7 BY MR. WILKINSON:

8 Q. Okay. I went and underlined it. It's the
9 first sentence on the top.

10 A. Yes. Yes, I did.

11 Q. Okay. And that was after you wrote that up
12 after you had your conversation with Marisol about this
13 incident?

14 A. Yes.

15 MR. WILKINSON: Could I retrieve that, please?

16 THE COURT: Yes.

17 MR. WILKINSON: If I could just have one
18 second, Your Honor.

(Pause.)

20 MR. WILKINSON: No further questions at this
21 time.

22 THE COURT: Ms. Woloshin.

23 MS. WOLOSHIN: Thank you.

1 (Pause.)

2 MR. WILKINSON: Without objection.

3 MS. WOLOSHIN: Your Honor, without objection,
4 the State moves into evidence the receipt.

5 THE COURT: That will be State's Exhibit 11.

6 THE CLERK: So marked, Your Honor.

7 (State's Exhibit No. 11 was admitted into
8 evidence.)

9 MS. WOLOSHIN: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes.

12 MS. WOLOSHIN: Thank you.

13 BY MS. WOLOSHIN:

14 Q. Detective Campos, I'm handing you what is
15 State's Exhibit 11. Is that the Pep Boys receipt that
16 you recovered during the search warrant of the
17 defendant's room?

18 A. Yes, it is.

19 Q. Okay. Can you tell me whether the defendant's
20 name is anywhere on that receipt.

21 A. Yes, it is. It's on there.

22 Q. And it says "Christian DeJesus"?

23 A. Yes.

1 Q. And Pep Boys is an automotive store; correct?

2 A. **Correct.**

3 Q. I'm stating the obvious.

4 Is there a certain vehicle that is listed on
5 that receipt?

6 A. **Yes.**

7 Q. And what vehicle is that?

8 A. **It's a Chrysler New Yorker, 1996, Pennsylvania**
9 tag **ELT 7400.**

10 Q. And that's the same car that you found the
11 defendant driving in; is that correct?

12 A. **That's correct.**

13 Q. Can you tell the jury what the date of that
14 receipt is.

15 A. **11/27/2002.** *2 months.*

16 Q. So months before the actual incident; correct?

17 A. **That's correct.**

18 Q. And can you tell the jury what address is
19 listed for Christian DeJesus?

20 A. **1702 West Third Street, Wilmington, Delaware**

21 **19805.**

22 Q. And March 6th, 2003, what address did you
23 execute a search warrant on?

1 A. **1702 West Third Street, Wilmington, Delaware**

2 **19805.**

3 Q. The same address; is that correct?

4 A. **That's correct.**

5 Q. When you interviewed the defendant, did he tell
6 you why he had a padlock on his room door?

7 A. **Because other people reside in the residence.**

8 Q. And so what was the purpose of putting the
9 padlock on there?

10 A. **To keep people out of his room.**

11 MS. WOLOSHIN: Thank you. I have nothing
12 further.

13 THE COURT: How far is 1702 West Third Street
14 from the place where this incident took place?

15 THE WITNESS: Two and a half blocks, Your
16 Honor.

17 THE COURT: Two and a half blocks?

18 THE WITNESS: Yes, sir.

19 THE COURT: Anything else?

20 MS. WOLOSHIN: No, Your Honor.

21 MR. WILKINSON: Yes.

22 RECROSS-EXAMINATION

2 BY MR. WILKINSON:

3 Q. The Pep Boys receipt, that wasn't found where
4 the bullets were. The Pep Boys receipt was not found in
5 the ceiling, was it?

6 A. **That's correct.**

7 Q. It was found in a dresser drawer?

8 A. **Yes.**

9 MR. WILKINSON: No further questions.

10 THE COURT: Ms. Woloshin?

11 MS. WOLOSHIN: Nothing further, Your Honor.

12 THE COURT: Okay. Officer, you may now step
13 down.

14 (Pause.)

15 THE COURT: I'm about to call it a day. Do you
16 have any other witnesses to present for tomorrow?

17 MS. WOLOSHIN: I don't believe so. I just have
18 to check with one witness, possibly Officer Medve, but I
19 don't anticipate calling anybody else. But there's a
20 possibility.

21 THE COURT: Mr. Wilkinson, are you anticipating
22 calling any witnesses tomorrow?

23 MR. WILKINSON: No, Your Honor.

1 THE COURT: You're not sure yet?

2 MR. WILKINSON: Correct.

3 THE COURT: I understand. The reason I'm
4 asking, if there are witnesses, I might convene a little
5 earlier. It sounds to me there probably won't. And
6 counsel and the Court still to have prepare the
7 instructions of law you folks have to get tomorrow.

8 I'm going to ask you to come in at 10:30. Even
9 if there is some testimony, that will allow us ample
10 time to get the case into your hands by tomorrow
11 afternoon.

12 During this overnight recess, please bear in
13 mind the instructions about not discussing the case
14 among yourselves or with anyone outside the courtroom.
15 I will ask you to come in at 10:30 tomorrow morning.
16 Have a good evening. And the jury is excused.

17 (The jury left the courtroom at 4:32 p.m.)

18 THE COURT: Anything we need to talk about?

19 MS. WOLOSHIN: No, Your Honor.

20 MR. WILKINSON: Just so we're clear, I don't
21 plan on calling any other witnesses. Mr. DeJesus may
22 testify or may not. I would still --

23 THE COURT: I fully understood that. And

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1 you're entitled to have overnight to discuss that with
2 him.

3 If Mr. DeJesus testifies, are there any
4 previous criminal convictions? The reason I ask is that
5 I'll include the proper instruction in the --

6 MR. WILKINSON: No, there are no criminal --
7 like a speeding ticket, I believe.

8 THE COURT: Okay. Are there any requests for
9 lesser includes? I'm not sure that there are any here
10 yet.

11 MR. WILKINSON: Your Honor, none are coming to
12 mind right now, but I don't want to give a definitive
13 no.

14 THE COURT: I'm not asking you to be definitive
15 about it. I'll take a look at it myself, and if I don't
16 think there's any, I'll be prepared. And if you tell me
17 about them tomorrow, I'll make sure they get in there.

18 MR. WILKINSON: Thank you.

19 THE COURT: Court's in recess.

20 (Whereupon the proceedings concluded at 4:35
21 p.m.)

22

23

110

STATE OF DELAWARE:

NEW CASTLE COUNTY:

I, Domenic M. Verechia, Official Court Reporter
of the Superior Court, State of Delaware, do hereby
certify that the foregoing is an accurate transcript of
the proceedings had, as reported by me in the Superior
Court of the State of Delaware, in and for New Castle
County, in the case therein stated, as the same remains
of record in the Office of the Prothonotary at
Wilmington, Delaware, and that I am neither counsel nor
kin to any party or participant in said action nor
interested in the outcome thereof.

WITNESS my hand this 25th day of June, 2004.

Domenic M. Verechia, RPR
Certification No. 162-PS

ORIGINAL

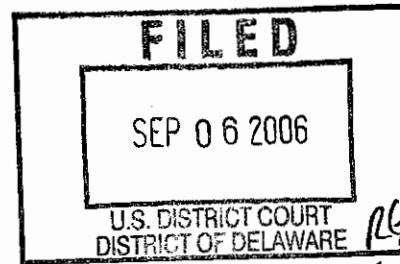
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IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIAN DEJESUS,)	
)	
Defendant Below,)	
Appellant,)	
)	No. _____, 2004
V.)	
)	
STATE OF DELAWARE,)	0 6 - 5 5 3
)	
Plaintiff Below,)	
Appellee.)	

NOTICE OF APPEAL

TO: LOREN MEYERS, ESQUIRE
 Deputy Attorney General
 Department of Justice
 State Office Building
 820 North French Street
 Wilmington, DE 19801



PLEASE TAKE NOTICE that Christian DeJesus, defendant-below, appellant, does hereby appeal to the Supreme Court of the State of Delaware, from the convictions and sentence imposed on May 14, 2004, in the Superior Court of the State of Delaware by the Honorable John E. Babiarz, Jr., in Criminal Action Nos. IN03031089-95 and IN03040614-15 in that Court. The name and address of the attorney below for Appellee is: Loren Meyers, Deputy Attorney General, Department of Justice, State Office Building, 820 North French Street, Wilmington, Delaware. The party against whom the appeal is taken is the State of Delaware.

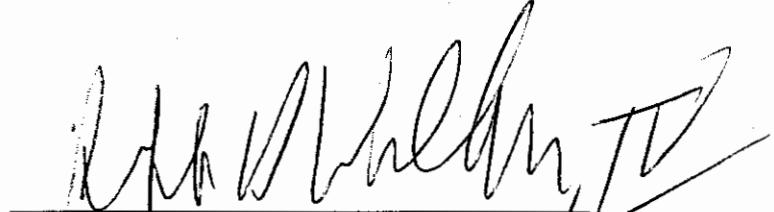
Exhibit G

A copy of the order being appealed from is not available but has been requested and will be filed with a cover letter as soon as same is received from the Prothonotary.

PLEASE TAKE FURTHER NOTICE that appellant hereby designates the portions of the record and transcript in accordance with Rule 7(c)(6) and 9(e)(ii) in the following manner:

Designation set forth on attached Exhibit A.

Dated: May 19, 2004



RALPH D. WILKINSON, IV, ESQUIRE
Assistant Public Defender
State Office Building
820 North French Street
Wilmington, DE 19801

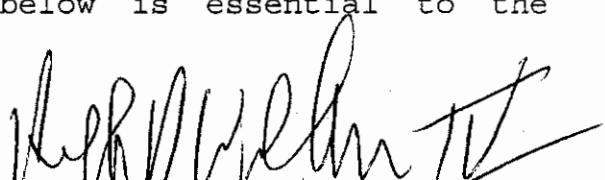
DIRECTIONS TO COURT REPORTER TO PROCEEDINGS
BELOW TO BE TRANSCRIBED PURSUANT TO RULE 9 (e)

TO: Domenic Verechia
Court Reporter, Superior Court
New Castle County Courthouse
500 N. King Street
Wilmington, DE 19801

Appellant does hereby direct the proceedings in Christian DeJesus v. State of Delaware, Criminal Action Nos. IN03031089-95 and IN03040614-15 in the Superior Court of the State of Delaware, In and For New Castle County, to be transcribed to include the following:

1. Opening statements of the State and the defendant;
2. All trial testimony including sidebars and office conferences during the trial;
3. Closing arguments of the State and the defendant;
and,
4. The Court's instructions to the jury and any exceptions thereto.

I hereby certify that transcription of the above-listed portions of the proceedings below is essential to the prosecution of this appeal.



RALPH D. WILKINSON, IV, ESQUIRE
Assistant Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801

AFFIDAVIT OF MAILING

BE IT REMEMBERED that on this 19th day of May, 2004, personally appeared before me, a Notary Public for the State and County aforesaid, Marjorie L. Swain, a secretary for the Public Defender's Office, who being by me duly sworn did depose and say as follows:

1. That she caused to be delivered by Public Defender runner, two copies of Appellant's Notice of Appeal, and two copies of Directions to Court Reporter to Proceedings Below to be Transcribed Pursuant to Rule 9(e) in the above-captioned matter to Loren Meyers, Deputy Attorney General, Department of Justice, State Office Building, 820 North French Street, Wilmington, Delaware 19801; and,

2. That she caused to be delivered by Public Defender runner, two copies of Directions to Court Reporter to Proceedings Below to be Transcribed Pursuant to Rule 9(e) in the above-captioned matter to Domenic Verechia, Court Reporter, Superior Court, New Castle County Courthouse, 500 N. King Street, Wilmington, Delaware 19801.

Marjorie L. Swain
Marjorie L. Swain

SWORN TO AND SUBSCRIBED by me the day and year aforesaid.

Mark D. Wilkinson, IV
NOTARY PUBLIC/ATTORNEY AT LAW

ORIGINAL

06-553

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIAN DEJESUS,

)

)

Defendant Below,

)

Appellant,

)

No. _____, 2004

v.

)

)

STATE OF DELAWARE,

)

)

Plaintiff Below,

)

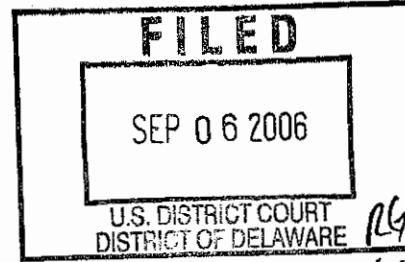
Appellee.

)

06-553

NOTICE OF APPEAL

TO: LOREN MEYERS, ESQUIRE
 Deputy Attorney General
 Department of Justice
 State Office Building
 820 North French Street
 Wilmington, DE 19801



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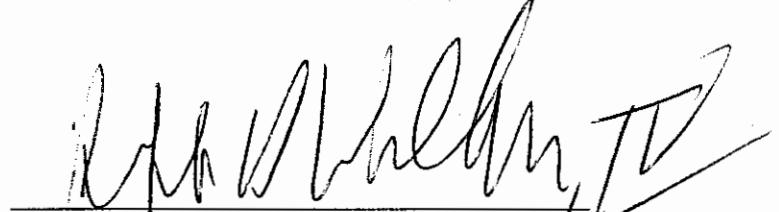
Exhibit G

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PLEASE TAKE FURTHER NOTICE that appellant hereby designates the portions of the record and transcript in accordance with Rule 7(c)(6) and 9(e)(ii) in the following manner:

Designation set forth on attached Exhibit A.

Dated: May 19, 2004



RALPH D. WILKINSON, IV, ESQUIRE
Assistant Public Defender
State Office Building
820 North French Street
Wilmington, DE 19801

DIRECTIONS TO COURT REPORTER TO PROCEEDINGS
BELOW TO BE TRANSCRIBED PURSUANT TO RULE 9 (e)

TO: Domenic Verechia
Court Reporter, Superior Court
New Castle County Courthouse
500 N. King Street
Wilmington, DE 19801

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1. Opening statements of the State and the defendant;
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and,
4. The Court's instructions to the jury and any exceptions thereto.

I hereby certify that transcription of the above-listed portions of the proceedings below is essential to the prosecution of this appeal.



RALPH D. WILKINSON, IV, ESQUIRE
Assistant Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801

AFFIDAVIT OF MAILING

BE IT REMEMBERED that on this 19th day of May, 2004, personally appeared before me, a Notary Public for the State and County aforesaid, Marjorie L. Swain, a secretary for the Public Defender's Office, who being by me duly sworn did depose and say as follows:

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Marjorie L. Swain
Marjorie L. Swain

SWORN TO AND SUBSCRIBED by me the day and year aforesaid.

Mark D. Wilkinson, IV
NOTARY PUBLIC/ATTORNEY AT LAW

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIAN DEJESUS,)
Defendant Below,)
Appellant,)
v.) No. 213, 2004
STATE OF DELAWARE,)
Plaintiff Below,)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

APPELLANT'S BRIEF UNDER RULE 26 (C)



RALPH D. WILKINSON, IV, ESQUIRE
Assistant Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801
Attorney for Appellant

DATED: September 24, 2004

Exhibit-61

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STATEMENT OF CHARGES

On April 7, 2003 Defendant was indicted by the Grand Jury of New Castle County for Burglary First Degree, 3 counts of Aggravated Menacing, 4 counts of Possession of a Firearm During the Commission of a Felony, and Unlawful Imprisonment First Degree for an alleged incident involving Marisol Ayala, Grace Almodovar and Solimari Torres on February 14, 2003.

NATURE OF DEFENSE AT TRIAL

Defendant testified that he did not commit any of the acts alleged by the State. Defendant introduced two letters written by one of the victims that stated Defendant had not committed the alleged offenses.

SUMMARY OF THE EVIDENCE

The State called four witnesses for a trial that commenced on May 13, 2004 and ended on May 14, 2004.

Grace Almodovar was the first witness to testify on the state's behalf. Almodovar was six years old at the time she testified at trial. Almodovar testified that a man came to her house and put a gun to her face and scared her. She further testified that she was in the house with her mother and sister. Almodovar never identified the Defendant. (A11)

Marisol Ayala was the next state's witness to testify. She stated that at the time of the alleged incident she lived with her two daughters, Grace Almodovar and Solimari Torres. Ayala testified that she was sitting outside of her apartment smoking when an individual approached her with a gun. Ayala stated that the individual "put the gun on me" and wanted to go into her house to look for someone else. Ayala testified that the individual with the gun was very angry and drove up to the house in a big green car. Ayala stated that the individual forced himself inside of the house, grabbed Almodovar and held the gun to her head. Ayala further stated that Solimari Torres was in the room and fainted upon seeing the individual with the gun. (A12-14)

Ayala also stated that a mugshot of the Defendant looked like the individual who committed the alleged offenses. She

stated that she picked out the Defendant's picture as looking similar to the perpetrator when she was shown it months before by Detective Campos. (A14-15)

Ayala under cross examination stated she could not be absolutely sure that it was the Defendant who committed the alleged crimes. Furthermore, she admitted to preparing two letters stating that the Defendant had not committed the alleged acts. (A16-17)

Solimari Torres was the next state's witness to testify. She stated that she is seventeen years old and the daughter of Marisol Ayala and sister of Grace Almodovar. Torres testified that a man forced his way into the apartment in which she lived brandishing a handgun. Torres testified that the individual with the handgun later got into a car and drove away. She stated that she picked the Defendant out of a picture lineup after the incident. Torres further testified that she spoke to the Defendant about the alleged incident after the fact and that he apologized to her and said he felt bad about what he had done. (A18-21)

Detective Campos was the next witness to testify. Campos stated that he spoke to the prior three witnesses about the alleged incident. (77-84) He further stated that he executed a search warrant on the Defendant's bedroom and found several different types of ammunition for a handgun. (83) Campos

testified that Ayala and Torres had picked the Defendant out of a six photograph lineup. (A24)

The Defendant testified at trial. He stated that he did not commit the alleged offenses. He stated that he shared his rented room with his brother. The Defendant admitted to speaking to Solimari Torres after the alleged incident but stated that he never told Torres that he had committed the acts. (A27-31) Defense rested after the testimony of Defendant.

Defendant was convicted on all counts.

SIGNIFICANT APPLICATIONS AND RULINGS

At the start of the trial Mr. Dejesus directly addressed the court and asked for leave to get a different attorney and to have the assistance of an interpreter. The trial judge denied the Defendant's request for another lawyer and held that he had sufficient command of the English language to proceed to trial. (A25-26)

At the end of the State's case, the Defendant asked for a Judgment of Acquittal regarding the Unlawful Imprisonment Charge and argued any restraint would be incidental to the act of Aggravated Menacing. The trial judge denied Defendant's motion on grounds that the two offenses were distinguishable. (A25)

Just prior to sentencing, the Defendant asked for merger of the Aggravated Menacing and Unlawful Imprisonment charges as well as the accompanying Possession of a Deadly Weapon Charge accompanying each offense. The trial judge denied the Defendant's motion. (A32)

There were no other legally significant applications or rulings.

SENTENCE

As to the four counts of Possession of a Firearm During the Commission of a Felony, IN03-03-1089, IN03-03-1090, IN03-03-1091, and IN03-04-0614, Defendant was sentenced to 3 years Level 5 for each count. Therefore, Defendant was sentenced to a total of 12 years level 5.

As to the count of Burglary 1st Degree, IN03-03-1092 Defendant was sentenced to 18 months Level 5 suspended for 18 months at Level 3 probation.

As to the count of Unlawful Imprisonment 1st Degree, IN03-03-1615 Defendant was sentenced to 18 months Level 5 suspended for 18 months at Level 3 probation.

As to the three counts of Aggravated Menacing, IN03-03-1093, IN03-03-1094, and IN03-03-1095, Defendant was sentenced to 18 months Level 5 suspended for level 3 probation for each count.

POINTS THE DEFENDANT WISHES THE COURT TO CONSIDER

Please see Attachment.

Mr: Rafe D. Wilkinson Date 9-9-2003
From: Cristian De jesus
Re: Points the Defendant wishes the court to ~~know~~ consider

SEP 16 2003
ROTH
PROSECUTOR

Mr: Wilkinson
After receiving and reviewing
the transcripts from my case I have discovered some inconsistencies and or conflicts
with the statements made by the witnesses.
Also the fact that I asked for but never received a translator so I could fully understand what was happening during my trial.

Mrs Ayala and ms Torres gave two different accounts of what happened and who left the house when.

In section 62 ms torres stated that she passed out. then in section 63 ms torres then stated that she did not pass out.

Also in section 63 ms torres stated that she ran out the house in section 64 ms torres stated that she left the house before the man with the gun

In section 41 ms Ayala stated that ms torres fell down. that right after he left the house she went to ms torres and woke her up.

If Ms Ayala's statement is true how could Ms Torres possibly describe the car the man with the gun got into. Ms Ayala has seen the Defendant prior to the incident.

If Ms Ayala told Ms Torres that it was Mr. DeJesus who done this of course Ms Torres Could describe his car.

In Section 71 Ms Torres that she heard some gun shots from where she was calling the police.

In Section 41 Ms Ayala stated that she herself called the police immediately.

Was it Ms Ayala or Ms. Torres who called the police because they both claim to have made the call.

The next point that I would like considered is the letters written by Ms Ayala.

Ms Ayala wrote two letters, one to Mr. DeJesus, the other in behave of Mr. DeJesus that she had notarized. Both letters stating that Ms Ayala made mistake that Mr. DeJesus was not the man who entered her house.

Ms Ayala was told that if she did not testify that she would be locked up.

Wms. Ayala did in fact spend a night in jail

This incident occurred on or about Feb. 14 2003. Det Campos did not show the victim the picture line-up until March 6, 2003. In Section 43 Wms. Ayala stated that of all the pictures she had been shown all the men were black except one.

In Section 44 Mrs. Ayala stated that she couldn't exactly say that's him that it looks like him.

Wms. Ayala never made a positive I.D. so out of 6 pictures all the men were black or at least dark complexioned except the picture of the defendant.

Wms. Torres was shown the same 6 pictures as Wms. Ayala. Wms. Torres walks down 3rd street often and has seen the defendant several times. Wms. Torres even knows the defendant name. She was shown 6 pictures 5 of which were unknown and of dark complexion.

I bring the defendant who is known by Wms. Torres and of light complexion.

The description of the man with the gun was

to be the same skin tone as Det. Campos
light the defendant the only light skin man
in the line-up stuck right out if it was
or wasn't him.

These are the fact I would like
the court to consider Could you please add
these to anything you wish to present to
the court in my behalf Could you also
forward me a copy of everything you plan to
present to the Court.

Sincerely, Christian Dejesus
501798

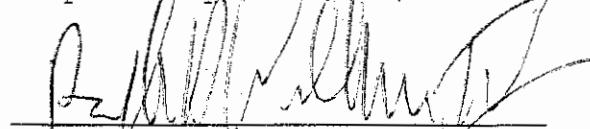
C. Dejesus
c. Ralph D. Wilkinson

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CONCLUSION

Wherefore, a judgement of this Court is sought upon the basis of the facts and authorities recited herein.

Respectfully submitted,


RALPH D. WILKINSON, IV, ESQUIRE
Assistant Public Defender

Dated: September 24, 2004

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIAN DEJESUS,)
Defendant Below,)
Appellant,)
)
v.) No. 213, 2004
STATE OF DELAWARE)
Plaintiff Below,)
Appellee.)

MOTION TO WITHDRAW AS COUNSEL

Ralph David Wilkinson, IV, attorney for Appellant, hereby moves pursuant to Supreme Court Rule 26(c) that this Honorable Court grant him leave to withdraw as counsel. Counsel states that he has made a conscientious examination of the record and the law and concludes that an appeal is wholly without merit.

WHEREFORE, counsel requests that the Court allow him to withdraw.

RALPH D. WILKINSON, IV, ESQUIRE
Assistant Public Defender
820 North French Street
Wilmington, DE 19801

Dated: September 24, 2004

ORDER

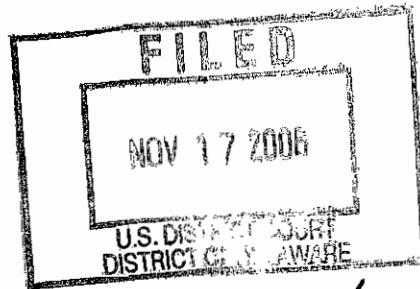
SO ORDERED this _____ day of _____, 2004.

JUSTICE

process was violated under the "totality of circumstances" because the victim was threatened by the prosecutor of being put in jail if she did not testify against the petitioner. The threat was carried out, the victim was put in jail overnight. See also Foster v. California, 394 U.S. 440, 443-44 (1969). In Neil v. Biggers, 409 U.S. 188, 198 (1972), the Court noted that "it is the likelihood of misidentification which violates a defendant's right to due process" and thus the court focused its inquiry on the reliability of the identification testimony. The reliability of the identification testimony weighs heavily in petitioner's favor. (Please see attached transcript of trial pages 50 thru 55.)

In Manson v. Brathwaite, 432 U.S. 98, 114 (1977). Accordingly, an identification derived from unnecessarily suggestive procedures need not be excluded if the totality of the circumstances indicates that the identification is reliable. In petitioner's case, the identification was unreliable and coerced. (See trial transcript at pages 49 and 55). (See also trial transcript page 25, lines 15 thru 23 and page 26, lines 1 thru 14). Counsel should have filed Motion To Dismiss prior to trial, based upon misidentification stated by the victim in certified letter. Had Counsel filed such motion the probability exists that the charges would have been dismissed.

(3)



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